



# ZONING BOARD OF APPEALS MEETING

Lansing Town Hall Board Room  
Wednesday, May 08, 2024  
6:30 PM

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## AGENDA

### SUBJECT TO CHANGE

Meeting is open to the public and streamed live on YouTube.

### VIEW THE MEETING LIVE - TOWN OF LANSING YOUTUBE CHANNEL

To find our YouTube Channel - Go to [www.lansingtown.com](http://www.lansingtown.com), click on the “YouTube” Icon (red square) located on the bottom left corner of our Home Page.

1. **Call Meeting to Order**
2. **Roll Call**
3. **Action Items**

- a. Project: Construction of new 16’ x 30’ garage and 12’ x 24’ car port.  
Applicant: John Guo, owner

Location: 2608 N Triphammer Road, TNP 42.-1-42

Project Description: The applicant is applying for two (2) area variances from Town of Lansing Zoning Law § 270-11, Schedule II: Area, Frontage, Yard, Height, and Coverage Requirements: (1) front yard setback of 60’ where 80’ is required and (2) front yard setback of 60’ where 80’ is required. This property is located in the R2 Zoning district.

SEQR: This action is classified as being Type II under SEQR and requires no further review.

Anticipated Action: review of the application, public hearing

- b. Project: Demolition of existing structure and erection of a new 2 story single family dwelling unit.

Applicant: Kristin Bartholomew, owner’s agent

Location: 18 Ladoga Park West, TPN 33.-1-50

Project Description: The applicant is applying for five (5) variances for relief from Town of Lansing Zoning Law § 270-11, Schedule II: Area, Frontage, Yard, Height, and Coverage Requirements: (1) front yard (west) 27.33 feet where 30 feet is required, (2) front yard (south) 14.92 feet where 30 feet is required, (3) rear yard (north) 3.08 feet where 25 feet is required and



(4) rear yard (east) 14.46 where 25 feet is required. (5) The minimum open space requirements dictate only 25% max lot coverage whereas applicant seeks 29% coverage (2146 sq ft of a 7350 sq ft lot). This property is located in L1 zoning with lake frontage.

SEQR: This action is classified as being Type II under SEQR and requires no further review.

Anticipated Action: review of the application, public hearing, final decision / conditions

- c. Project: Removal of existing conditions applicable to development of 32 Ladoga Park  
Applicant: Jason Demarest, agent for Lillian Babcock

Location: 30 – 32 Ladoga Park

Project Description: Agent on behalf of client is requesting removal of the condition that limits filling the property around the cottage at 32 Ladoga Park W. “The original concern with this variance at the time was about drainage onto adjacent properties. Since the newly acquired lawn area (30 Ladoga) is not bound by the variance, that parcel is permitted to be filled. The new drainage plan per the floodplain application shows that water does not run onto adjacent properties, which satisfies the purpose of the condition from the 2004 variance.”

SEQR: this project is listed as a Type II action under SEQR, requiring no further review from the board

Anticipated Action: review of the application, public hearing (TBD), final decision / conditions

- d. Project: Delaware River Solar N. Triphammer Road Solar Facility – Project # 1: 5MW Solar Facility. Project # 2: 3 MW Solar Facility.  
Applicant: Delaware River Solar

Location: N. Triphammer Road; two neighboring lots: 44.-1-1.2 and 44.-1-3.3

Project Description: Applicant wishes to develop one five (5) megawatt and one three (3) megawatt AC solar facilities located on the two neighboring properties on N. Triphammer Road, tax map numbers 44.-1-1.2 and 44.-1-3.3. This project is located in the R2 zoning district, which does not permit the installation of solar energy facilities. The applicant wishes to have this application reviewed under the use variance standards applicable to public utilities, rather than the traditional use variance test under N.Y Town Law 267-b(2).

SEQR: This project is classified as an Unlisted action under SEQR and will require further review.

Anticipated Action: review of the application

#### **4. Adjourn Meeting**

In accordance with the Americans with Disabilities Act, persons who need accommodation to attend or participate in this meeting should contact the Town Clerk’s Office at 607-533-4142. Request should be made 72 hours prior to the meeting.

**Seeking an area variance of front yard setback of 60' instead of 80' at 2608 N. Triphammer Road**

- A carport is under construction for the lower level apartment
  - Building Permit BP#22-198 issued November, 2022 with a front yard setback of 60'
  - Renewed on January 3, 2024
  - Should the front setback be 80', I will run out of the driveway and will back a vehicle into a very low spot (see picture). The vehicle will be stuck during the winter snowing days.
- Planning an attached garage for the upper level unit.
  - A front yard setback of 60' will also be requested in order to add an attached garage for the upper level apartment.

2608 N Triphammer Road





**Carport**

Section 3, Item a.



**Garage**





FORM 663 N. Y. DEED--WARRANTY with Lien Covenant  
(Repealed 1912, Chap. 601, Chap. 607 Laws of 1908)

TITLE AND REGISTERED TO PROPERTY  
TITLE LAW FIRM PUBLISHED BY

376 PAGE 576

# This Indenture,

Made the 19<sup>th</sup> day of April Nineteen Hundred and Fifty-five

Between JOSEPH MORAVEC and ENMA MORAVEC, husband and wife,  
both of Ludlowville, Tompkins County, New York,

parties of the first part, and

JOHN T. MCCARTHY and MARY E. MCCARTHY, husband and wife, both  
of 112 West Lincoln Street, Ithaca, Tompkins County, New York,

parties of the second part,

Witnesseth that the parties of the first part, in consideration of

ONE and no/100- - - - - Dollar

(\$ 1.00- - - -) lawful money of the United States, and other valuable  
consideration paid by the parties of the second part,

do hereby grant and release unto the parties of the second part, the sur-  
vivor, his or her / and assigns forever, all THAT TRACT OR PARCEL OF LAND

situate in the Town of Lansing, County of Tompkins and State of New  
York, being a part of Military Lot #94 and bounded and described as  
follows: Beginning in the middle of North Tri-hammer Road (formerly  
called University Road) at a point 418 feet north of the southeast  
corner of the 42 acre parcel of land conveyed to Evert and Andrew E.  
Bogardus by Lydia Brown by deed dated April 1, 1872 and recorded in  
the Tompkins County Clerk's Office in Liber 8 of Ithaca Deeds at  
page 145, said point of beginning being also in the northeast corner  
of property sold by Joseph and Emma Moravic to Robert E. and Bette E.  
Nobles by deed dated July 29, 1937 and recorded in Liber 301 of Deeds  
at page 95 (now owned by Baldwin); running thence west and along the  
north line of the Nobles' property 208 feet; thence south parallel  
to the North Trihammer Road and along the west line of Nobles'  
property 208 feet; running thence west and along the north line of  
premises of George H. and Jean S. Klune acquired by deed recorded  
June 5, 1954 in Liber 388 of Deeds at page 151, 440 feet to the

North Triphammer Road 448 feet; running thence east 548 feet to the center line of Triphammer Road; running thence south along the center of Triphammer Road 240 feet to the point or place of beginning.

Being a portion of the premises conveyed to the grantors herein by deed recorded February 18, 1932 in Liber 229 of Deeds at page 40.

**Together** with the appurtenances and all the estate and rights of the parties of the first part in and to said premises,

**To have and to hold** the premises herein granted unto the parties of the second part, the survivor, his or her distributees and assigns forever.

**And** said parties of the first part

covenant as follows:

**First.** That the parties of the second part shall quietly enjoy the said premises;

**Second.** That said parties of the first part

will forever **Warrant** the title to said premises.

**Third.** That, in Compliance with Sec. 13 of the Lien Law, the grantors will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

**In Witness Whereof,** the parties of the first part have hereunto set their hands and seals the day and year first above written.

In Presence of



*Joseph Morano*

*Emma Morano*



\$220

LIBER 376 PAGE 578

State of New York }  
County of Tompkins } SS.

On this 14<sup>th</sup> day of April Nineteen Hundred and Fifty-five before me, the subscriber, personally appeared

JOSEPH MORAVEC and EMMA MORAVEC

to me personally known and known to me to be the same persons described in and who executed the within Instrument, and they duly acknowledged to me that they executed the same

*Em. A. Pyle*

EMMA A. PYLE  
Notary Public, State of New York  
No. 55  
Tompkins County  
Term Expires March 1956

A true copy of the original recorded on the 21 day of April, 1955 at 3:10 o'clock P.M., and examined.

*H. L. Morris*  
Clerk.

**2. EASEMENT**

John T. McCarthy and Mary E. McCarthy

TO

New York State Electric & Gas Corporation

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*Instrument Date:* 6-13-1956  
*Acknowledged Date:* 6-13-1956  
*Record Date:* 9-12-1956 *Time:* 1:00 PM  
*Instrument Location:* Liber 391 of Deeds; Page 302  
*Consideration:* \$1.00

For above instrument, see attached copy



Easement

391 PAGE 302

The undersigned, hereinafter called the Grantor, being the owner of or having an interest in land situate in the Town of Lansing County of Tompkins State of New York, fronting on the street or highway known as North Triphammer Road and bounded Southly by the land of A. L. Baldwin and Northly by the land of Joseph Moravec

In Consideration, of \$1.00 paid by the Grantee, hereby grants and releases unto the New York State Electric & Gas Corporation, a corporation organized under the laws of the State of New York, having its principal office at 108 East Green Street, Ithaca, New York, herein called the Grantee, its successors and assigns, its or their lessees or licensees, the right, privilege, and authority to construct, reconstruct, extend, operate, inspect, maintain, and at its pleasure remove, a pole line with the necessary wires, cross arms, guy wires, braces and other fixtures and appurtenances used or adopted for the transmission and/or distribution of electric current and/or for telephone or telegraph communication for public or private use, upon and over said land and property and/or the highways abutting or running through said land.

Said line enters the Grantor's land from the highway extending in a westerly direction to a point about 12' Northly of Grantor's Southly property line and about 28' from the center line of the highway, together with a service to the Grantor's house.

Together with the right to trim, cut, and remove trees and brush to the extent necessary to clear said wires and pole line by at least 15 feet.

Provided, however, that any damage (other than for trimming, cutting, or removing trees, as above provided) to the property of the Grantor, caused by the Grantee in constructing or repairing said line, shall be borne by the Grantee.

Dated this 13 th day of June, 1956.

In presence of:  
L. L. Summers  
 (Subscribing Witness)  
ad. to both

John T. McCall (L.S.)  
 Address 112 W. Lincoln St. Ithaca, N.Y.  
Mary E. Mc Carthy (L.S.)  
 Address 112 W. Lincoln St. Ithaca, N.Y.

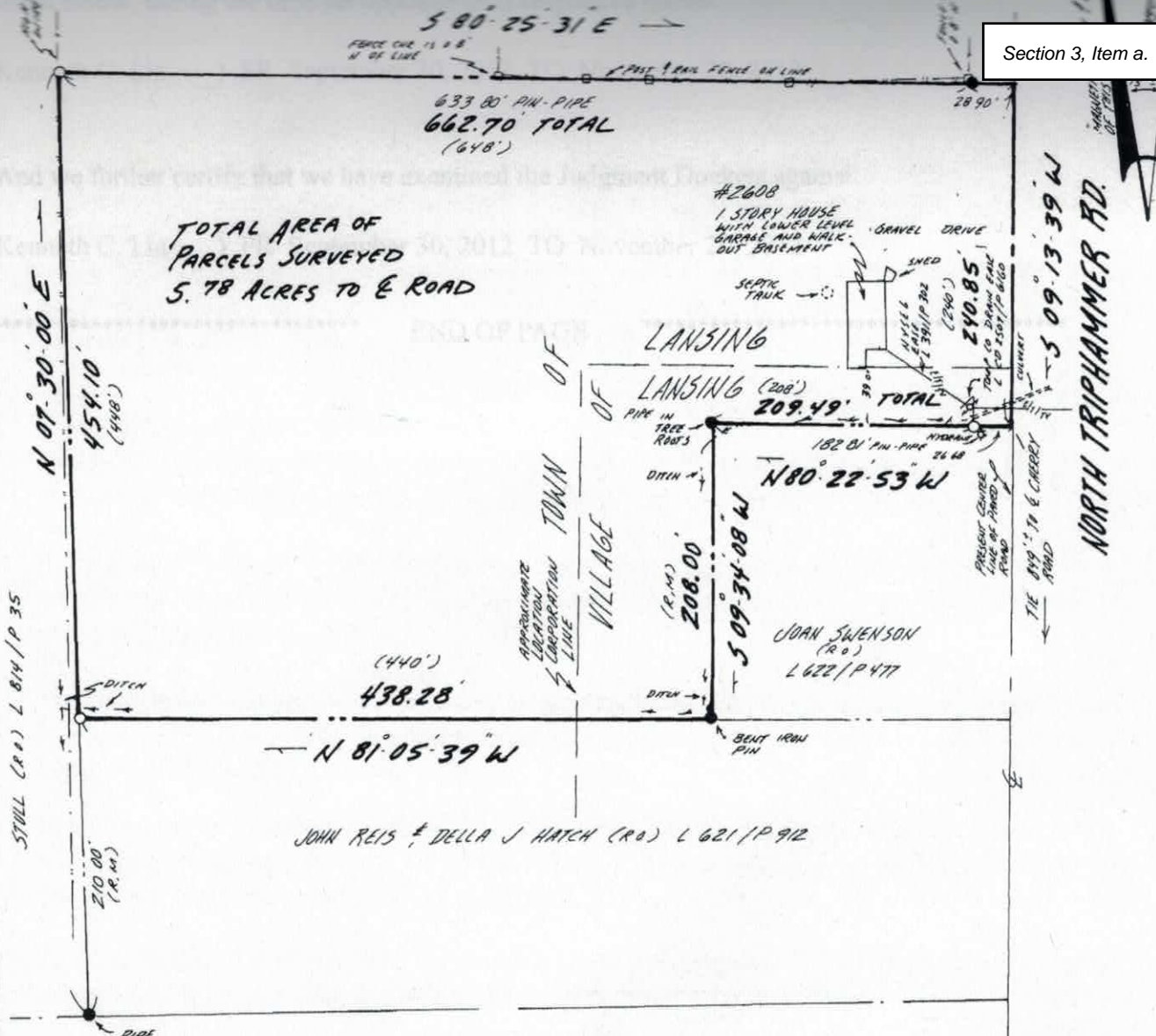
NEW YORK STATE ELECTRIC  
 (Subscribing Witness Acknowledgment)

State of New York  
 County of Tompkins

On this 13 day of June 1956, before me personally came L. L. Summers and John T. McCall and Mary E. Mc Carthy and they acknowledged to me that they executed the foregoing instrument, with which I am personally acquainted, who being by me duly sworn, did depose and say that he is the owner of the land herein described.

John T. McCall  
Mary E. Mc Carthy

John T. McCall  
 (Notary Public)  
 Notary Public, State of New York  
 Qualified in Tompkins County  
 Term Expires March 31, 1957



**REFERENCE MAP**

"SURVEY MAP (OF) NO. 2608 NO TRIPHAMMER ROAD  
MADE BY C. M. BRAHMER, JR., L.S.,  
DATED 10/13/1980

**SURVEY MAP**  
LANDS OF

**KENNETH C. LIN**

- LEGEND**
- SET NO 6 REBAR & SURVEY CAP
  - EXISTING IRON PIN OR PIPE
  - ⊕ UTILITY POLE
  - (R.O) REPUTED OWNER

VILLAGE OF LANISING TAX MAP NO 421-1-42 } REFERENCE DEED L 580 / P 332  
TOWN OF LANISING TAX MAP NO 42-1-42 }  
COUNTY OF TOMPKINS STATE OF NEW YORK

REAGAN, LAND SURVEYING P.O. BOX 1124 DRYDEN NEW YORK 13653 (607) 844-8837		NOTE: ANY REVISIONS TO THIS MAP MUST COMPLY WITH SECTION 7209 SUBDIVISION 2 OF THE NEW YORK STATE EDUCATION LAW. ALL CERTIFICATIONS HEREON ARE VALID FOR THIS MAP AND COPIES THEREOF ONLY IF SAID MAP OR COPIES BEAR THE EMBOSSED SEAL OF THE LICENSED LAND SURVEYOR WHOSE SIGNATURE APPEARS HEREON. THIS MAP NOT VALID WHEN USED IN CONJUNCTION WITH A "SURVEY AFFIDAVIT" OR "CERTIFICATE OF NO-CHANGE".	
DATE SURVEYED	DRAWN BY	SCALE	JOB NO
OCT, 2012	REAGAN	1"=80'	12-214
I hereby certify to BRUVEY, GRASMAN, DUBOW, MARCUS & ORKIN, LLP, STEWART TITLE INSURANCE COMPANY, COUNTRY STONES, LLC, WINES & ALLEN LAW OFFICE,			
that I am a licensed land surveyor, New York State License No 049892 and that this map correctly delineates an actual survey on the ground made by me or under my direct supervision, that it was prepared in accordance with the current code of practice for land title surveys adopted by the New York Association of Professional Land Surveyors, and that I found no visible encroachments either way across property lines except as shown hereon			
SIGNED <i>Michael J. Reagan</i>		DATED 10/18/2012	



RECEIVED/FILED  
OCT 20 2012  
NOV 20 PM 3:57

PBM

# Short Environmental Assessment Form

## Part 1 - Project Information

### Instructions for Completing

**Part 1 – Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.


<b>Part 1 – Project and Sponsor Information</b>			
John Guo			
Name of Action or Project: Carport and attached garage			
Project Location (describe, and attach a location map): 2608 N. Triphammer Road			
Brief Description of Proposed Action: Build a carport for lower level apartment, and an attached garage for the upper level unit.			
Name of Applicant or Sponsor: John Guo		Telephone: 607-227-9636	
		E-Mail: etrons@yahoo.com	
Address: 2608 N. Triphammer Road			
City/PO: thaca		State: NY	Zip Code: 14850
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		_____ 0.1 acres	
b. Total acreage to be physically disturbed?		_____ 0.1 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 4.7 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input checked="" type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			

		Section 3, Item a.	
5. Is the proposed action,	NO		
		<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation services available at or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies: _____ _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If Yes, briefly describe: _____ _____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE**

Applicant/sponsor/name: John Guo Date: 3/18/2024

Signature:  Title: owner

- \*Can the benefit be achieved by other means feasible to the applicant? No
- \*Will there be an undesirable change in the neighborhood character or nearby properties? No
- \*Is the request substantial? No
- \*Will this request have adverse physical or environmental effect? No
- \*Is the difficulty self-created? No

## BRIEF DESCRIPTION

The current house is a one story cottage with a sleeping loft and a breezeway to a garage with an apartment on its second floor. The owners would like to add a full second floor and connect the apartment above the garage to the second floor of the main house to make this a forever home for the family to gather. The current house is sitting on an inadequate foundation to add a second floor. The proposal is to tear down the cottage and rebuild on its existing footprint with slight modifications. We are applying for a zoning variance to align the house and the garage (which currently sits at a 8% angle from the house and swings toward the neighbors property.) We are also proposing to combine two bump outs on the north side of the house (which is already over the setback line) into a single element that protrudes less into the setback. The house currently is out of compliance as it exceeds the setbacks on all sides of the house because of the unique shape of the property and the lack of road frontage.

## TEST QUESTION ANSWERS

*Can the benefit be achieved by other means ?-* We are looking for the easiest path to move forward on a tricky site where the house is out of compliance. We could keep the exact footprint but it would be much easier to build without the garage at an angle and the garage is currently so close to the neighbors carport (which is and partially over the property line) that construction and siding will be nearly impossible to achieve without moving it slightly.

*Will there be an undesirable change in the neighborhood character or nearby properties?*

We do not feel that the change will in any way impact the neighborhood. The immediate neighbor to the north will gain a small amount of breathing room.

*Is the request substantial?*

In looking at the survey, we are proposing very minor changes to make construction more straightforward. In all ways the slight proposed modifications pull the property further from the property line and in addition we are actually making the footprint slightly smaller in all directions.

*Will this request have adverse physical or environmental effect?*

None whatsoever.

*Is the difficulty self created?*

We could stick to the exact footprint but it adds unnecessary complexity to the build and the changes will slightly improve distances from the property line.



# Short Environmental Assessment Form

## Part 1 - Project Information

### Instructions for Completing

**Part 1 – Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b><u>Part 1 – Project and Sponsor Information</u></b>			
Kristin Bartholomew/Thotful Design LLC			
Name of Action or Project: Kleeschulte/Warkentin Residence-new build			
Project Location (describe, and attach a location map): 18 Ladoga Park Road, Lansing Ny 14882			
Brief Description of Proposed Action: The project is a new home to be built on the existing noncompliant footprint of an existing home. The minor changes we are proposing, align the garage to the house, where it is currently at an 8° angle to the home. In addition, there are two bump outs on the north side of the house that we are proposing to combine into one bump out which reduces encroachment into the setback. We are also proposing to reduce the footprint by approximately 60 square ft.			
Name of Applicant or Sponsor: Kristin Bartholomew		Telephone: 607-277-1559	
		E-Mail: Thotfuldesign@gmail.com	
Address: 35 Myers Road			
City/PO: Lansing		State: Ny	Zip Code: 14882
1. <u>Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?</u>		NO	YES
If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. <u>Does the proposed action require a permit, approval or funding from any other government Agency?</u>		NO	YES
If Yes, list agency(s) name and permit or approval:		<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. a. <u>Total acreage of the site of the proposed action?</u>		.171 acres	
b. <u>Total acreage to be physically disturbed?</u>		.05 acres	
c. <u>Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?</u>		.339 acres	
4. <u>Check all land uses that occur on, are adjoining or near the proposed action:</u>			
5. <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			



		Section 3, Item b.	
5. Is the proposed action,	NO		
		<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. <u>A permitted use under the zoning regulations?</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. <u>Consistent with the adopted comprehensive plan?</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. <u>Is the proposed action consistent with the predominant character of the existing built or natural landscape?</u>	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. <u>Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?</u>	NO	YES	
If Yes, identify: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. <u>Will the proposed action result in a substantial increase in traffic above present levels?</u>	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation services available at or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. <u>Does the proposed action meet or exceed the state energy code requirements?</u>	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies: This new residential build will exceed insulation requirements for roof walls and floor. The new build will utilize energy, efficient, heating and appliances and lighting.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. <u>Will the proposed action connect to an existing public/private water supply?</u>	NO	YES	
If No, describe method for providing potable water: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. <u>Will the proposed action connect to existing wastewater utilities?</u>	NO	YES	
If No, describe method for providing wastewater treatment: _____ Septic system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. <u>Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?</u>	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____			
_____			
_____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:

Shoreline    Forest    Agricultural/grasslands    Early mid-successional  
 Wetland    Urban    Suburban

15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?  
 Lake Sturgeon      NO      YES  
     

16. Is the project site located in the 100-year flood plan?  
 NO      YES  
     

17. Will the proposed action create storm water discharge, either from point or non-point sources?  
 If Yes,  
     a. Will storm water discharges flow to adjacent properties?  
     b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?  
 If Yes, briefly describe:  
 \_\_\_\_\_  
 \_\_\_\_\_

NO      YES  
        
        
     

18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)?  
 If Yes, explain the purpose and size of the impoundment: \_\_\_\_\_  
 \_\_\_\_\_

NO      YES  
     

19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?  
 If Yes, describe: \_\_\_\_\_  
 \_\_\_\_\_

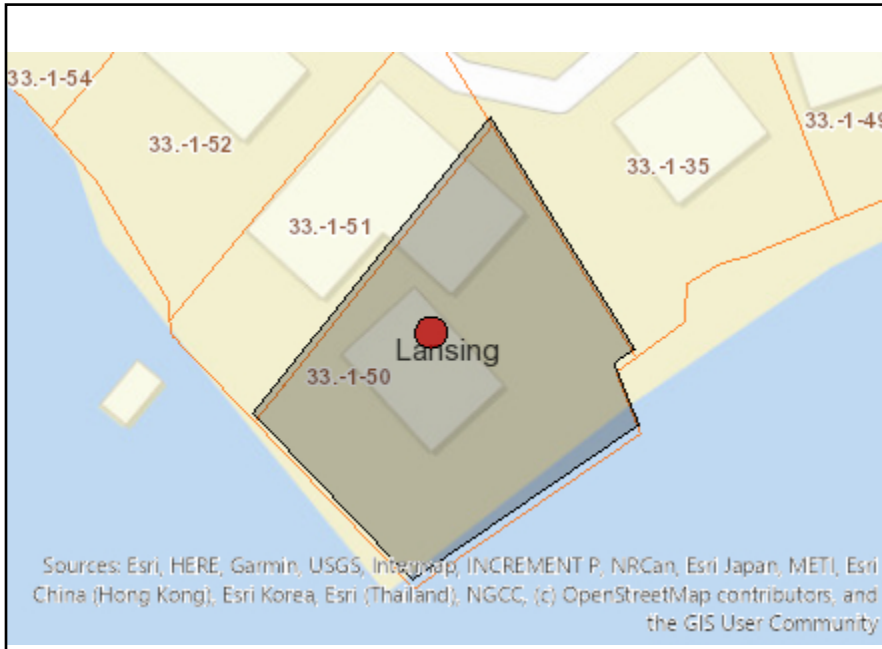
NO      YES  
     

20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?  
 If Yes, describe: \_\_\_\_\_  
 \_\_\_\_\_

NO      YES  
     

**I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE**

Applicant/sponsor/name: Kristin Bartholomew      Date: 1/18/2025  
Signature Kristin Bartholomew      Title: Residential Designer



**Disclaimer:** The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	Yes
Part 1 / Question 15 [Threatened or Endangered Animal - Name]	Lake Sturgeon
Part 1 / Question 16 [100 Year Flood Plain]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
Part 1 / Question 20 [Remediation Site]	No



TOGETHER WITH AND SUBJECT TO a driveway agreement dated June 14, 2013 and recorded in the Tompkins County Clerk's Office as Instrument No. 2013-08103.

TOGETHER WITH AND SUBJECT TO an Agreement dated June 17, 2011 and July 1, 2011 between Nicholas J. Barra, Beverly Bortz, William Burin, Noel Desch and Janet Desch and the Norfolk Southern Railway Company, recorded in the Tompkins County Clerk's Office on July 7, 2011, being Instrument No. 577569-001.

SUBJECT TO and TOGETHER WITH the restriction set forth in Liber 443 of Deeds at page 728 that the purchaser and his assigns agree to keep the premises free and clear of waste materials and garbage and anything that would constitute a nuisance on the premises and it is agreed that no alcoholic liquors will be sold on the same and that no buildings will be built on the premises except such as shall reasonably conform with other similar premises and to build on a line with other premises so there will be no projection of one cottage ahead of the others. It is further understood that no boathouse or other structures, except a boat dock, shall be built along or on the shore so that they would project ahead of cottage sites except to the extent modified by decision of the Honorable Walter J. Relihan, Jr. dated February 8, 2005 and recorded in said Clerk's Office as Instrument Number CJ009535-001. It is understood that such drainage bath and sanitary arrangements shall be so made that the water supply shall not be contaminated or anything that would cause unhealthy conditions on the premises. It is further understood that the grantee herein, his representatives or assigns shall conduct no commercial enterprises on the premises either directly or indirectly.

When and in the event the present driveway marked "Driveway" on a survey map entitled "SURVEY MAP PORTION OF GRACE BREWER PROPERTY, SOUTH SHORE LADOGA POINT, CAYUGA LAKE, MYERS, TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK" originally dated October 7, 1960, prepared by T. G. Miller Associates, P.C., a copy of which map was filed in the Tompkins County Clerk's Office in Map Book E-1, Page 57, is moved further to the rear from the Lake, the driveway from the premises herein conveyed, marked "Existing Driveway" on said map, shall be extended to a width of 8 feet, to approach and connect with the 15 foot driveway used by other lot owners.

TOGETHER WITH the right that restricts the owners of the lot to the east from constructing any building, house trailer or other structure on said area lying between the rights and easements of egress and ingress, as shown on said map filed at Map Book E-1, Page 57.

BEING a portion of the same premises conveyed to Joseph Daley by Executor's Deed of Ann M. McNamara, individually, and as Executor of the Last Will and Testament of Nicholas J. Barra dated June 20, 2013 and recorded June 20, 2013 in the Tompkins County Clerk's Office as Instrument No. 2013-08100.

Parcels A and B above are more particularly shown on a survey map entitled "Survey Map Showing Portion of Lands of Joseph Daley Located on Ladoga Park West, Town of Lansing, Tompkins County, New York," made by T.G. Miller, P.C., Engineers and Surveyors, dated April 7, 2017, which survey is incorporated herein by reference hereto and which survey is intended to be filed concurrently herewith.



SUBJECT TO AND TOGETHER WITH an encroachment agreement dated June 17, 2013 and recorded in the Tompkins County Clerk's Office as Instrument No. 2013-08102.

BEING a portion of the same premises conveyed by to Joseph Daley by Executor's Deed from Ann M. McNamara, individually, and as Executor of the Last Will and Testament of Nicholas J. Barra dated June 20, 2013 and recorded June 20, 2013 in the Tompkins County Clerk's Office as Instrument No. 2013-08100.

**PARCEL B**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, Tompkins County, New York, on Military Lot No. 86 of said Town and more particularly bounded and described as follows:

BEGINNING at a point at the southeasterly corner of premises now or formerly of Mahool (617/727) which point is marked by a found iron pin in the asphalt;

Thence South  $50^{\circ}58'15''$  West along the southerly line said Mahool premises 109.42 feet to a point marked by a found iron pipe and continuing on same course an additional 6.27 feet to a computed point for a total course distance of 115.69 feet;

Thence South  $29^{\circ}28'40''$  East 55.48 feet to a point marked by a found iron pin;

Thence North  $66^{\circ}98'44''$  East 100.39 feet to a point marked by a found iron pipe in the southwesterly corner of premises now or formerly of Heck (441/3);

Thence North  $19^{\circ}57'05''$  West along the westerly line of said Heck premises 44.25 feet to a point marked by a found iron pipe and continuing along said same course an additional 34.30 feet to a point marked by a found iron pipe and further continuing on same course an additional 7.18 feet to the point and place of beginning, for a total course distance of 85.73 feet.

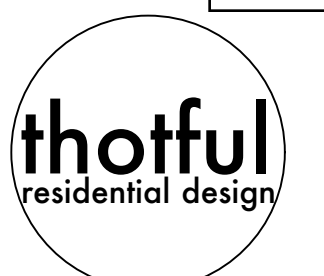
TOGETHER WITH all right, title and interest of the grantor in and to the land and foreshore to the low water mark of Cayuga Lake.

TOGETHER WITH the rights, in common with others, to ingress and egress over the 15 foot wide common driveway and over the eight foot wide driveway to its intersection with Ladoga Park Road as set forth in the deed recorded in the Tompkins County Clerk's Office in Liber 443 of Deeds at page 728.

SUBJECT TO the following:

1. Easement granted to New York State Electric & Gas Corporation by instrument recorded in the Tompkins County Clerk's Office in Liber 599 of Deeds at Page 61.
2. Right of way and easement granted to the Town of Lansing, recorded in the Tompkins County Clerk's Office in Liber 742 of Deeds at page 12.





607-277-1559

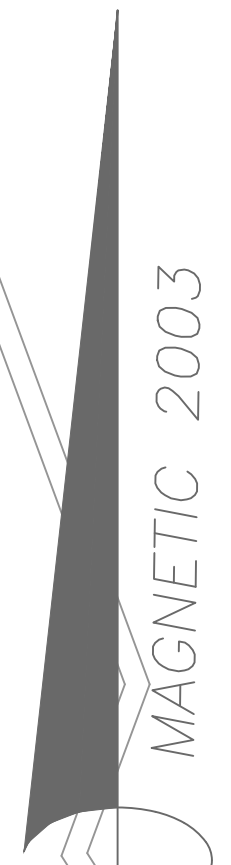
dawn kleeschulte and richard warkentin residence  
18 ladoga park road  
lansing, ny 14882

description	date
bid set	11.6.23
permit set	
add #1	
title:	
SURVEY - HOUSE	
drawn by:	kmb
checked by:	jer
scale:	as noted
sheet number	

0' 20' 40' 60'



SCALE: 1"=30'



N

existing house -  
2'-6" from  
property line  
proposed house -  
3'-1" from  
property line

25' setback line

30' setback line

GARAGE

HOUSE

PARCEL B

"INCLUDE ALL RIGHT, TITLE  
& INTEREST TO THE LOW  
WATER MARK OF CAYUGA LAKE"

CONCRETE BREAKWALL

LAKE

TITLE INFORMATION  
DAWN KLEESCHULTE & RICHARD WARKENTIN  
SEE INSTRUMENT No. 2017-10259

PARCEL A TAX MAP No. 33-1-33 AREA=0.168 ACRES  
PARCEL B TAX MAP No. 33-1-50 AREA=0.171 ACRES

TBM ELEV  
SLAB=385.3'

ENTR  
ELEV  
=387.9'

ENTR  
ELEV  
=388.50'

S\* 29°28'40" E  
55.48'

27'-4"  
27'

\*N 66°09'44" E 100.39'

S 50°58'15" W  
8'-7" 7'-8" 11'-2"

115.69'

5'-4"

19'

16'-9"

14'-0 1/4"

14'-5 1/2"

N 19°57'05" W

85.73'

dashed line is existing  
house footprint (2212 SF)  
shaded area is proposed  
house footprint (2146 SF)



**WARRANTY DEED  
with Lien Covenant**

THIS INDENTURE made this 24<sup>th</sup> day of May, in the year Two Thousand Seventeen

**BETWEEN**

JOSEPH DALEY of 306 East State Street, Ithaca, New York 14850

party of the first part

**AND**

DAWN KLEESCHULTE and RICHARD H.J. WARKENTIN, of 104 Sperry Lane, Ithaca, New York 14850, wife and husband, as tenants by the entirety,

party of the second part,

**WITNESSETH**, that the party of the first part, in consideration of ONE AND NO/100 Dollars (\$1.00) lawful money of the United States, and other good and valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, his or her heirs, distributees, executors, successors and assigns forever,

**The premises are more fully described on the attached Schedule A.**

**TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

**TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, his or her heirs, distributees, executors, successors and assigns forever,

**AND** the party of the first part covenants as follows:

**FIRST**, that the party of the second part shall quietly enjoy the said premises;

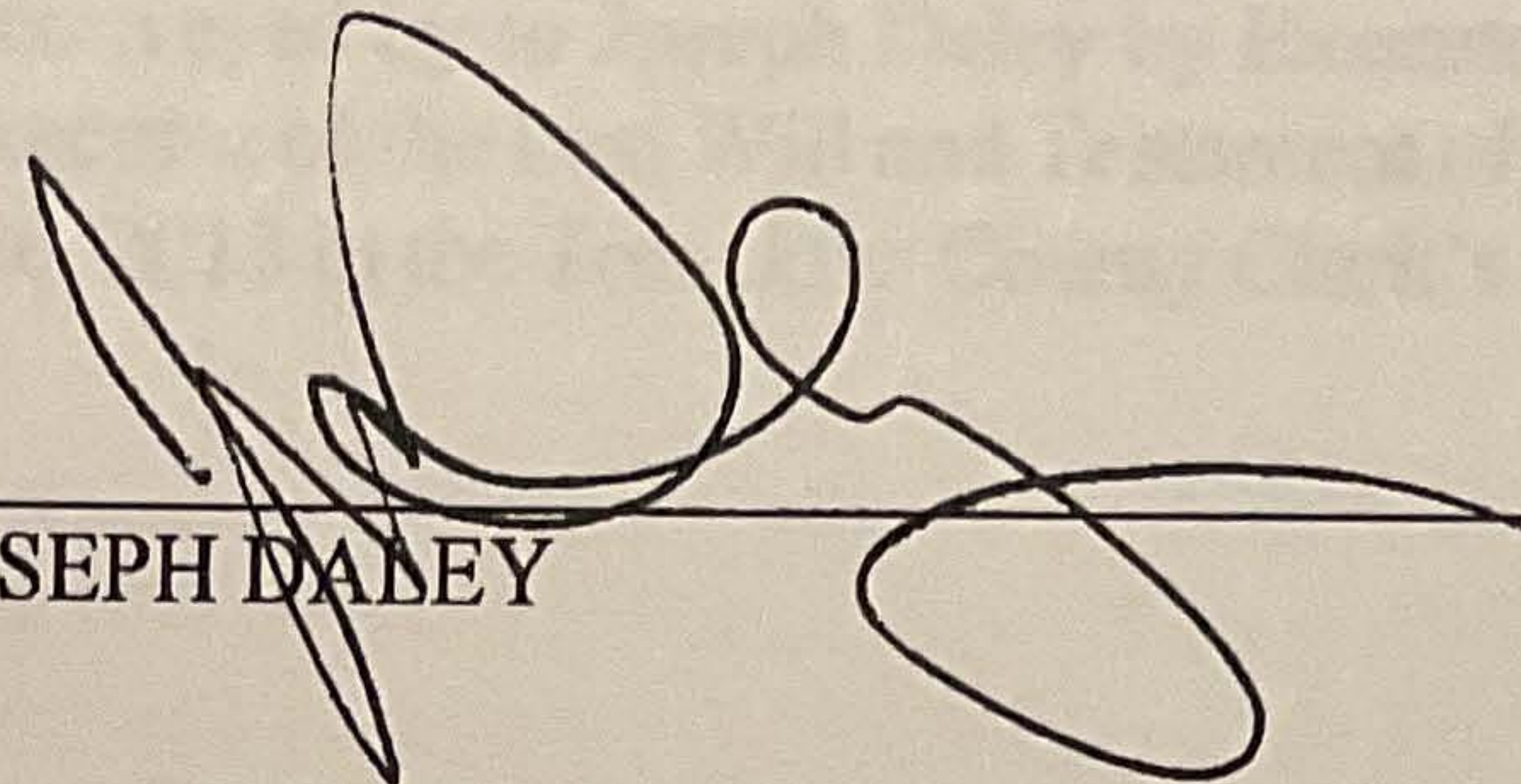
**SECOND**, that said party of the first part will forever **WARRANT** the title to said premises.

**THIRD**, that, in compliance with Sec. 13 of the Lien Law, the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.



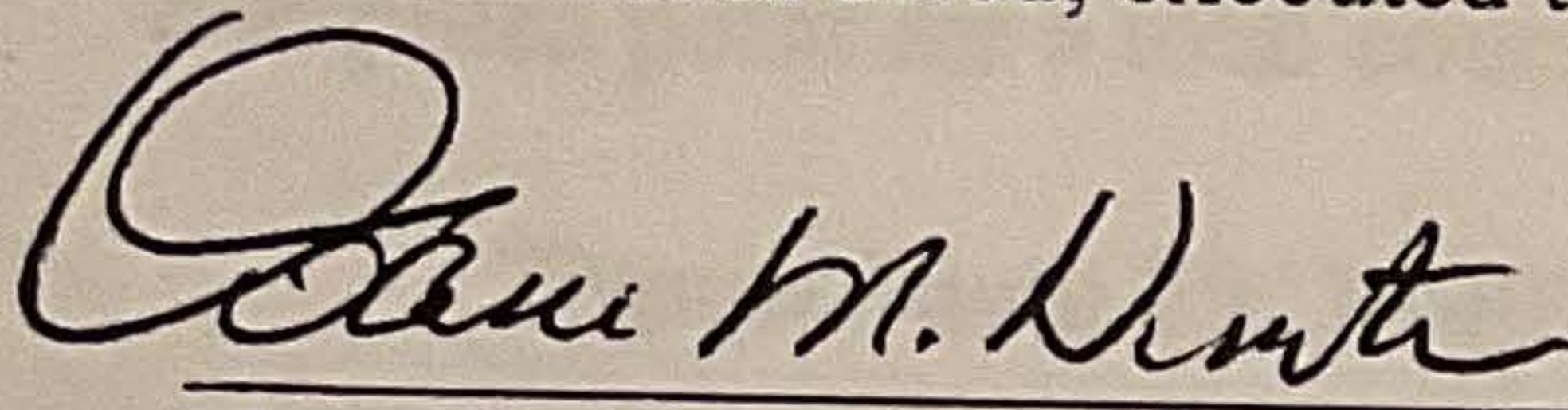
IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

IN PRESENCE OF

  
JOSEPH DALEY

STATE OF NEW YORK )  
COUNTY OF TOMPKINS ) ss:

On the 25<sup>TH</sup> day of May in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared JOSEPH DALEY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

JOANNE M. HUNTER  
Notary Public, State of New York  
No. 4943753  
Qualified in Tompkins County 18  
Term Expires October 31, 2018



## SCHEDULE A

**PARCEL A**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York, situate on Military Lot No. 86 in said Town, more particularly bounded and described as follows:

BEGINNING at a point marked by found iron pipe located on the northeasterly line of a 15-foot right of way, being also the northwesterly corner of premises now or formerly of Milner (Instrument No. 489098-001);

Thence North  $51^{\circ}51'29''$  East along said Milner premises passing through a point marked by a found iron pin at 43.00 feet and continuing along said course an additional 112.38 feet to a computed point in the westerly line of premises now or formerly of Desch (Instrument No. 592161-001) for a total course distance of 155.38 feet;

Thence North  $08^{\circ}58'04''$  along said Desch premises 28.95 feet to a computed point being the northwest corner of said Desch premises;

Thence South  $81^{\circ}51'00''$  West 41.32 feet to a computed point;

Thence South  $53^{\circ}28'32''$  West 126.79 feet in part along the southerly line of premises now or formerly of Beach (703 Deeds 306) passing through a point marked by a found iron pipe at 105.84 feet and continuing along said course an additional 20.95 feet to a point marked by a found iron pin in the southwest corner of said Beach premises and the northeasterly line of the aforementioned 15 foot right of way, for a total course distance of 126.79 feet;

Thence South  $30^{\circ}07'38''$  East along the easterly line of the said 15 feet right of way 50.00 feet to the point and place of beginning.

TOGETHER WITH all right, title and interest in and to those portions of the 15 foot right of way lying between the northwesterly and southeasterly lines of the above described premises to the centerline of said right of way.

TOGETHER WITH rights for ingress and egress to said premises on and over a 15 foot right of way shared in common with other owners of the premises on Ladoga Landing and Myers Road.

SUBJECT TO rights of the public and others to travel on and over the aforesaid 15 foot right of way.

SUBJECT TO the restriction set forth in Liber 386 of Deeds at page 269 that the purchasers and their assigns shall keep the premises free and clear of waste materials and garbage, and anything that would constitute a nuisance on the premises, and no alcoholic liquors shall be sold on the premises, and no buildings shall be built on the premises except a private garage, but no part of it shall be used for living quarters; and it is understood that no commercial enterprise shall be allowed or conducted on the premises directly or indirectly.







To: The Town of Lansing Zoning Dept:  
RE: Variance

I give my permission for Kristen Bartholomew  
of Thoughtful Design LLC to submit a  
variance on my behalf for construction  
@ 18 Ladoga Pk.

Thank you,  
Karin Kleckulte  
(607) 342-6923



LINE NOTATIONS

LINE	BEARING	DISTANCE
L1	S 49°35'14" W	31.42'
L2	N 40°24'36" W	2.06'
L3	S 49°35'24" W	7.00'
L4	N 40°24'36" W	6.94'
L5	S 49°35'24" W	48.12'
L6	S 40°24'36" E	6.94'
L7	S 49°35'14" W	25.00'
L8	S 40°24'36" E	2.06'

\* -PROPOSED NEW DIVISION LINES

REFERENCE MAPS

- 1.) ENTITLED "SURVEY MAP NO. 28,30,32,34 LADOGA POINT" DATED 12/7/1992 BY T.G. MILLER, P.C.
- 2.) ENTITLED "NO. 34 LADOGA POINT" DATED 12/15/1986 BY T.G. MILLER, P.C.
- 3.) ENTITLED "SURVEY MAP OF NO. 38 LADOGA POINT" DATED 11/13/1986/87 BY T.G. MILLER, P.C.
- 4.) ENTITLED "SUBDIVISION OF LAKE FRONT FOR ELLEN G. TOWNSEND, EX." DATED 7/15/1941 BY E.D. CRUMB., L.S.
- 5.) ENTITLED "NO. 28 & 30 LADOGA PARK WEST...." DATED 7/2/2019 BY T.G. MILLER, P.C.

LEGEND

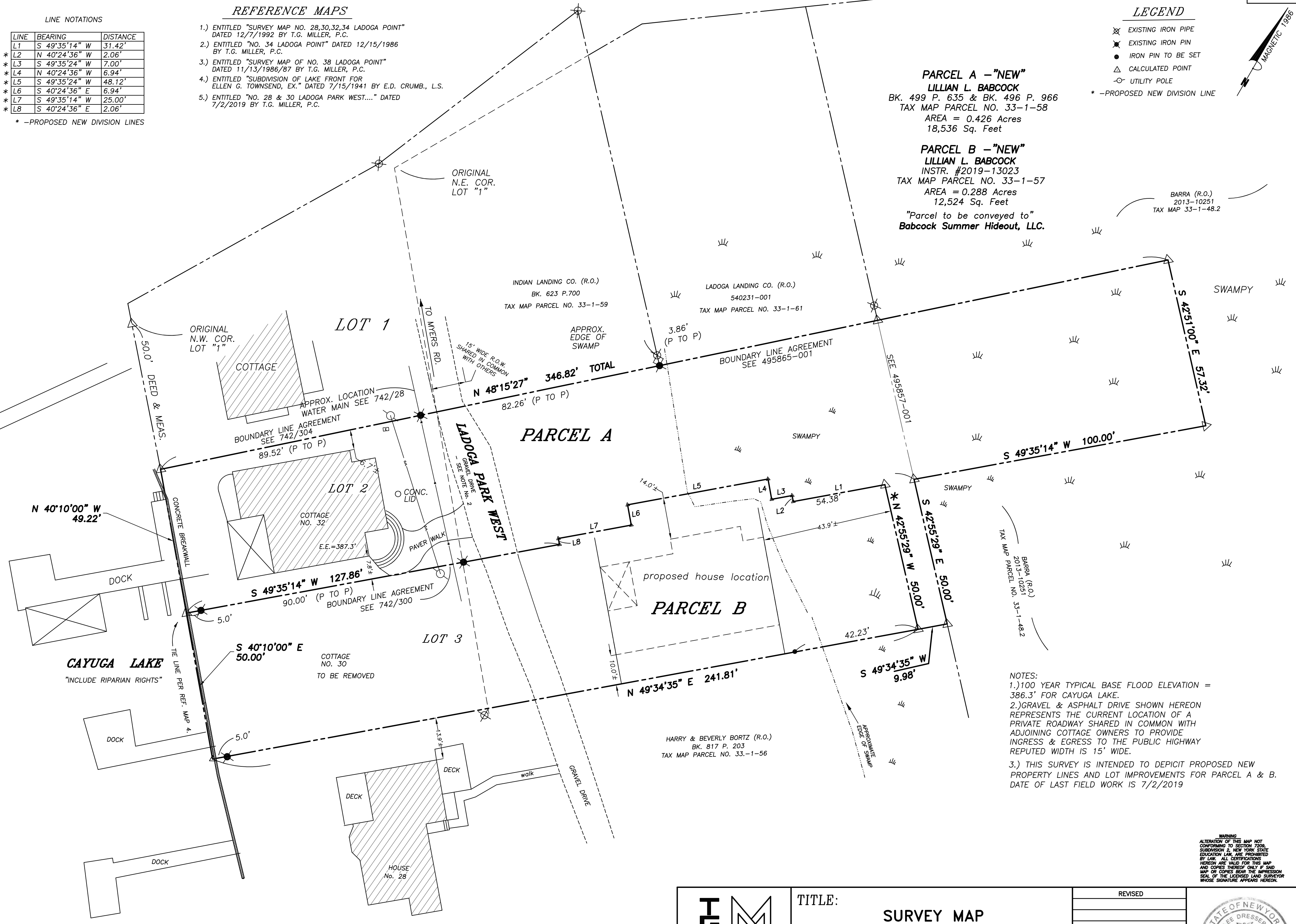
- ⊗ EXISTING IRON PIPE
- ⊙ EXISTING IRON PIN
- IRON PIN TO BE SET
- △ CALCULATED POINT
- UTILITY POLE
- \* -PROPOSED NEW DIVISION LINE



**PARCEL A - "NEW"**  
**LILLIAN L. BABCOCK**  
 BK. 499 P. 635 & BK. 496 P. 966  
 TAX MAP PARCEL NO. 33-1-58  
 AREA = 0.426 Acres  
 18,536 Sq. Feet

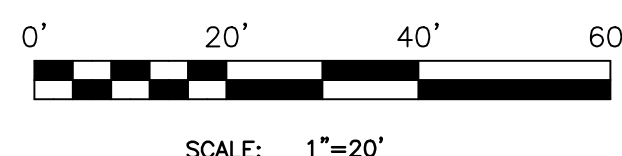
**PARCEL B - "NEW"**  
**LILLIAN L. BABCOCK**  
 INSTR. #2019-13023  
 TAX MAP PARCEL NO. 33-1-57  
 AREA = 0.288 Acres  
 12,524 Sq. Feet  
 "Parcel to be conveyed to"  
**Babcock Summer Hideout, LLC.**

BARRA (R.O.)  
 2013-10251  
 TAX MAP 33-1-48.2



- NOTES:
- 1.) 100 YEAR TYPICAL BASE FLOOD ELEVATION = 386.3' FOR CAYUGA LAKE.
  - 2.) GRAVEL & ASPHALT DRIVE SHOWN HEREON REPRESENTS THE CURRENT LOCATION OF A PRIVATE ROADWAY SHARED IN COMMON WITH ADJOINING COTTAGE OWNERS TO PROVIDE INGRESS & EGRESS TO THE PUBLIC HIGHWAY REPUTED WIDTH IS 15' WIDE.
  - 3.) THIS SURVEY IS INTENDED TO DEPICIT PROPOSED NEW PROPERTY LINES AND LOT IMPROVEMENTS FOR PARCEL A & B. DATE OF LAST FIELD WORK IS 7/2/2019

WARNING  
 ALTERATION OF THIS MAP NOT  
 CONFORMING TO SECTION 7209,  
 SUBDIVISION 2, NEW YORK STATE  
 EDUCATION LAW, ARE PROHIBITED  
 BY LAW. ALL CERTIFICATIONS  
 HEREON ARE VALID FOR THIS MAP  
 AND COPIES THEREOF ONLY IF SAID  
 MAP OR COPIES BEAR THE IMPRESSION  
 SEAL OF THE LICENSED LAND SURVEYOR  
 WHOSE SIGNATURE APPEARS HEREON.



**T G M**  
**T. G. MILLER P.C.**  
 ENGINEERS AND SURVEYORS  
 605 WEST STATE STREET  
 ITHACA, NEW YORK 14850  
 TEL. (607)272-6477

TITLE:  
**SURVEY MAP**  
**NO. 30 & 32 LADOGA PARK WEST**  
 TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK  
 DATE: **5/18/2020**  
 SCALE: **1"=20'**

REVISED

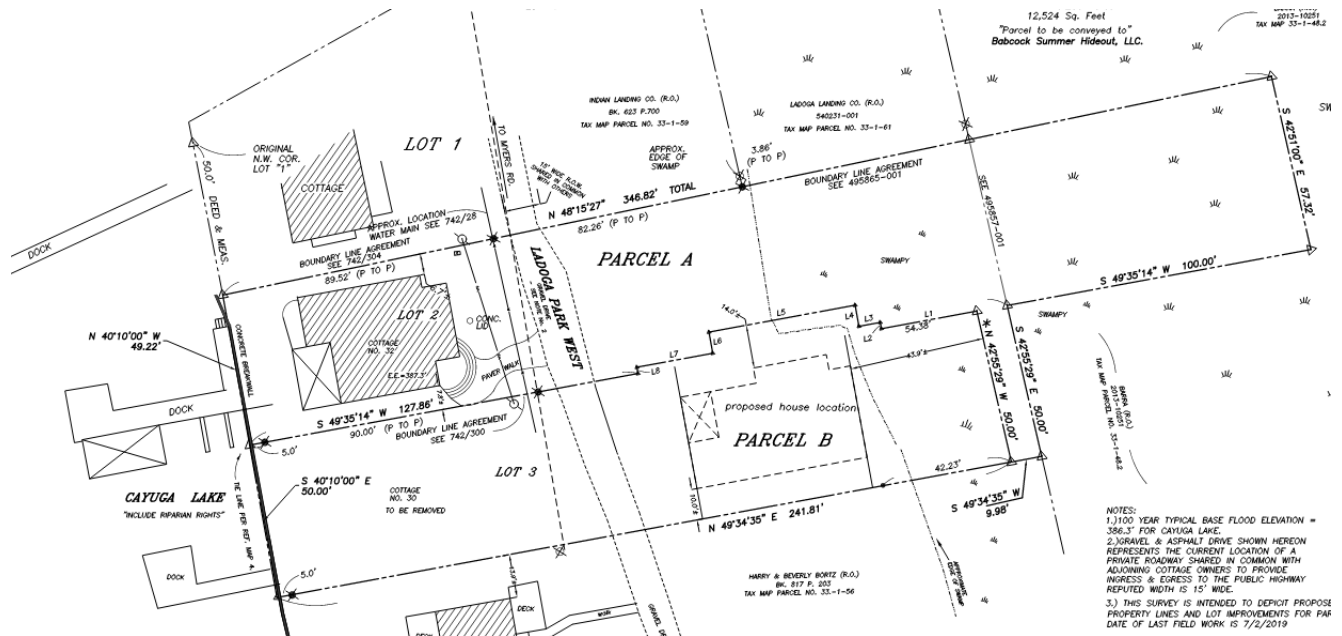


To: Town of Lansing ZBA  
**Attn. John Zepko**  
 29 Auburn Rd  
 Lansing, NY 14882

From: **Jason K. Demarest, RA**  
 Date: 3/14/2024

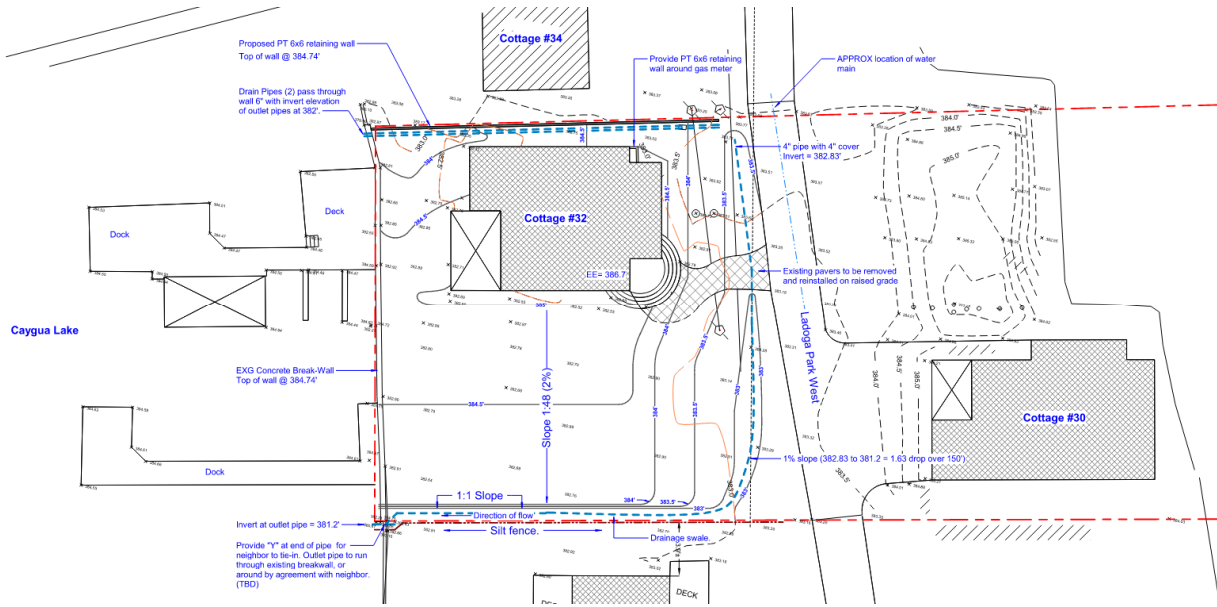
**Re: 30-32 Ladoga Park West - Zoning variance modification request**

On November 27 of 2023, a floodplain application was made to improve yard conditions on the south side of 32 Ladoga Park W (lot 2) and 30 Ladoga (lot 3) a newly acquired parcel, while maintaining proper drainage away from the road, the neighbor's lot and lot 32 itself. 32 & 30 Ladoga Park W are both owned by our client, Lillian Babcock. These two lots are separate lots but combined just for tax purposes. See attached survey as well as image below.



In July 2004, the Town of Lansing granted an area variance for the original parcel and cottage at 32 Ladoga Park W to replace the existing structure on the original footprint of the existing cottage. However, the construction project never commenced in 2004. In 2006, a new design was proposed, and a variance was granted, which permitted a structure to be erected beyond the footprint of the original cottage. Upon approval of that variance, a condition was added that restricted raising the grade level around the cottage. The property often floods in the spring.

JKDA on behalf of our client, Lillian Babcock, is requesting the ZBA to remove the condition that limits filling the property around the cottage at 32 Ladoga Park W. The original concern with this variance at the time was about drainage onto adjacent properties. Since the newly acquired lawn area (30 Ladoga) is not bound by the variance, that parcel is permitted to be filled. The new drainage plan per the floodplain application shows that water does not run onto adjacent properties, which satisfies the purpose of the condition from the 2004 variance. See attached grading plan as well as image on the next page.



Sincerely,

Jason Demarest, RA



### VAR-24-5

Zoning Variance

Status: Active

Submitted On: 4/3/2024

### Primary Location

32 Ladoga Park W  
Lansing, NY 14882

### Owner

Babcock, Lillian L  
30 Trowbridge Rd Pittsford,  
NY 14534

### Applicant

Jason Demarest  
 607-330-4555  
 team@jkdarchitect.com  
 950 Danby Rd.  
STE 105  
Ithaca, NY 14850

## Application Information

Are you the property owner?\*

No

Select the reason for this application:\*

Area Variance

Have you applied for a building permit and had it denied?\*

No

Select the provision that your request relates to:\*

Town of Lansing Zoning Code

Identify the corresponding Town of Lansing Zoning Code Section:

For a listing of the Zoning Codes click here: [Town of Lansing Zoning Codes](#)

Purpose of Request:\*

The owner is requesting that the ZBA remove a variance condition that limits filling the property around the cottage at 32 Ladoga Park W. The concern with this variance at the time was about drainage onto adjacent properties. The owner would also like to fill 30 Ladoga Park W. Since the newly acquired lawn area is not bound by the variance, that parcel is permitted to be filled. The new drainage plan shows that water does not run onto adjacent properties, which satisfies the purpose of the condition from the 2004 variance.

**All Applicants for Variances shall please read the following:**

The Zoning Board of Appeals may grant Variances from the provisions of this Ordinance, only where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or where by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of a piece of property, or where by reason of other extraordinary or exceptional circumstances, the strict application of the requirements of this Ordinance would result in practical difficulties to, or undue hardship upon, the owner of this property, and further provided that this relief may be granted without substantially impairing the intent and purpose of this Ordinance. In granting a Variance, the Zoning Board of Appeals may attach such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable so that the purpose of this Ordinance will be served, public safety and welfare secured and substantial justice done.

**Incomplete Applications will not be considered.**

Applicant/Agent must be present at the Public Hearing. This application, accompanying fee and all supporting documents must be submitted no later than two (2) weeks prior to the date that the request is to be considered. See Schedule of Meetings at [www.lansingtown.com](http://www.lansingtown.com).

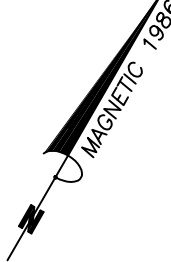
**Applicant Signature\***

✓ JKD Architecture  
Mar 13, 2024



LEGEND

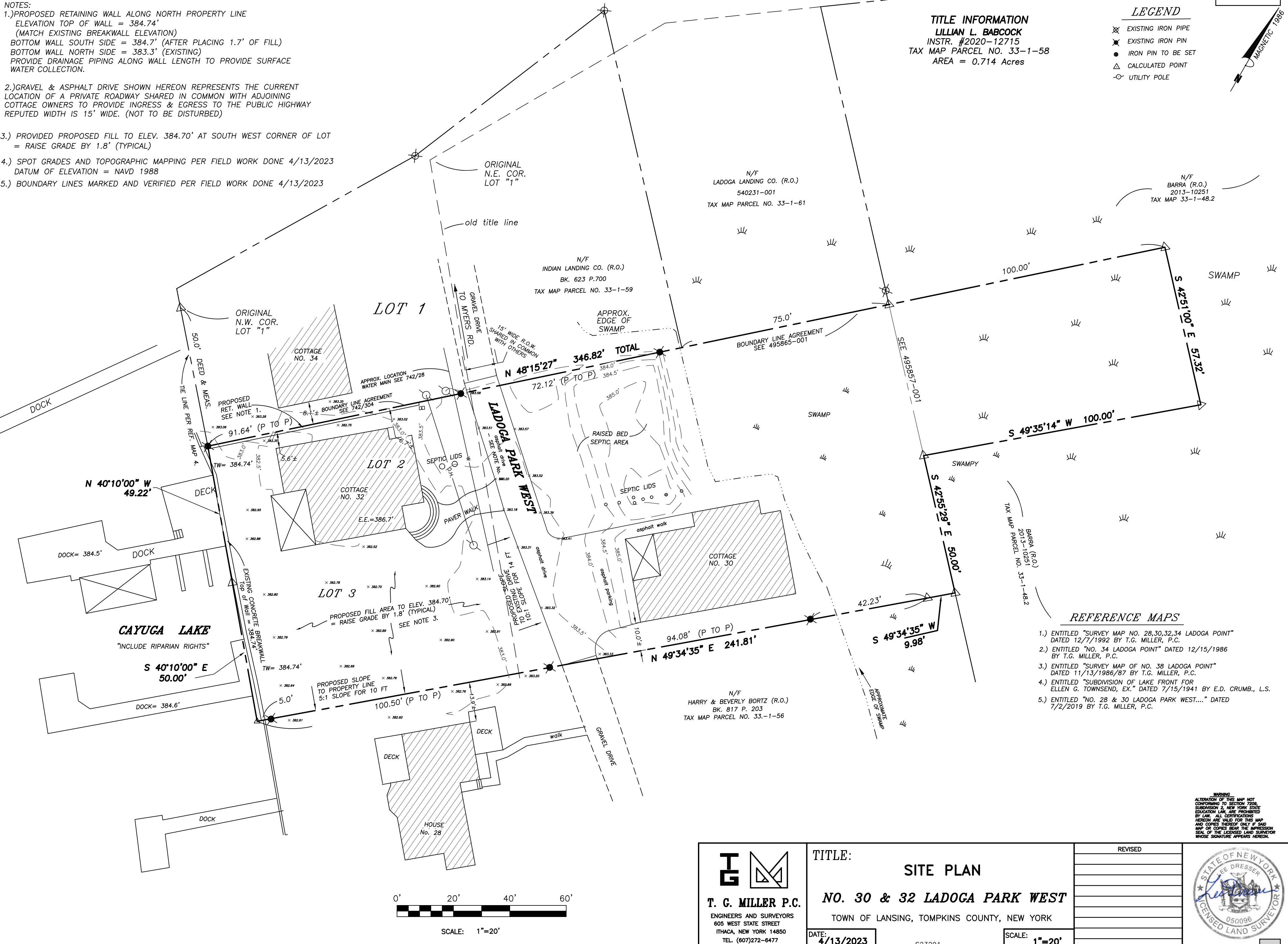
- EXISTING IRON PIPE
- EXISTING IRON PIN
- IRON PIN TO BE SET
- CALCULATED POINT
- UTILITY POLE



TITLE INFORMATION

LILLIAN L. BABCOCK  
 INSTR. #2020-12715  
 TAX MAP PARCEL NO. 33-1-58  
 AREA = 0.714 Acres

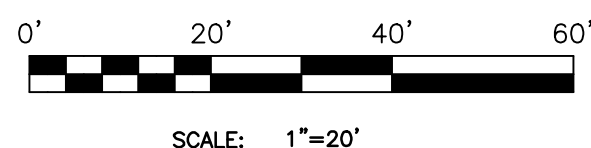
- NOTES:
- 1.) PROPOSED RETAINING WALL ALONG NORTH PROPERTY LINE  
 ELEVATION TOP OF WALL = 384.74'  
 (MATCH EXISTING BREAKWALL ELEVATION)  
 BOTTOM WALL SOUTH SIDE = 384.7' (AFTER PLACING 1.7' OF FILL)  
 BOTTOM WALL NORTH SIDE = 383.3' (EXISTING)  
 PROVIDE DRAINAGE PIPING ALONG WALL LENGTH TO PROVIDE SURFACE WATER COLLECTION.
  - 2.) GRAVEL & ASPHALT DRIVE SHOWN HEREON REPRESENTS THE CURRENT LOCATION OF A PRIVATE ROADWAY SHARED IN COMMON WITH ADJOINING COTTAGE OWNERS TO PROVIDE INGRESS & EGRESS TO THE PUBLIC HIGHWAY REPUTED WIDTH IS 15' WIDE. (NOT TO BE DISTURBED)
  - 3.) PROVIDED PROPOSED FILL TO ELEV. 384.70' AT SOUTH WEST CORNER OF LOT = RAISE GRADE BY 1.8' (TYPICAL)
  - 4.) SPOT GRADES AND TOPOGRAPHIC MAPPING PER FIELD WORK DONE 4/13/2023  
 DATUM OF ELEVATION = NAVD 1988
  - 5.) BOUNDARY LINES MARKED AND VERIFIED PER FIELD WORK DONE 4/13/2023



REFERENCE MAPS

- 1.) ENTITLED "SURVEY MAP NO. 28,30,32,34 LADOGA POINT" DATED 12/7/1992 BY T.G. MILLER, P.C.
- 2.) ENTITLED "NO. 34 LADOGA POINT" DATED 12/15/1986 BY T.G. MILLER, P.C.
- 3.) ENTITLED "SURVEY MAP OF NO. 38 LADOGA POINT" DATED 11/13/1986/87 BY T.G. MILLER, P.C.
- 4.) ENTITLED "SUBDIVISION OF LAKE FRONT FOR ELLEN G. TOWNSEND, EX." DATED 7/15/1941 BY E.D. CRUMB., L.S.
- 5.) ENTITLED "NO. 28 & 30 LADOGA PARK WEST...." DATED 7/2/2019 BY T.G. MILLER, P.C.

WARNING:  
 ALTERATION OF THIS MAP NOT CONFORMING TO SECTION 7209, SUBDIVISION 2, NEW YORK STATE EDUCATION LAW, ARE PROHIBITED BY LAW. ALL CERTIFICATIONS HEREON ARE VALID FOR THIS MAP AND COPIES THEREOF ONLY IF SAID MAP OR COPIES BEAR THE IMPRESSION SEAL OF THE LICENSED LAND SURVEYOR WHOSE SIGNATURE APPEARS HEREON.



**T G M**  
**T. G. MILLER P.C.**  
 ENGINEERS AND SURVEYORS  
 605 WEST STATE STREET  
 ITHACA, NEW YORK 14850  
 TEL. (607)272-6477

TITLE:  
**SITE PLAN**  
**NO. 30 & 32 LADOGA PARK WEST**  
 TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK

DATE: **4/13/2023**

SCALE: **1"=20'**

REVISED



## Short Environmental Assessment Form

### Part 1 - Project Information

**Instructions for Completing**

**Part 1 – Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

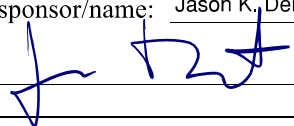
Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 – Project and Sponsor Information</b>			
Jason K. Demarest Architecture on behalf of Lillian Babcock.			
Name of Action or Project: zoning variance (variance modification request)			
Project Location (describe, and attach a location map): 30-32 Ladoga Park West, Lansing NY 14882			
Brief Description of Proposed Action: The owner is requesting that the ZBA remove a variance condition that limits filling the property around the cottage at 32 Ladoga Park W. The concern with this variance at the time was about drainage onto adjacent properties. The owner would also like to fill 30 Ladoga Park W. Since the newly acquired lawn area is not bound by the variance, that parcel is permitted to be filled. The new drainage plan shows that water does not run onto adjacent properties, which satisfies the purpose of the condition from the 2004 variance.			
Name of Applicant or Sponsor: Jason K. Demarest Architecture		Telephone: 607-330-4555 E-Mail: team@jkdarchitect.com	
Address: 950 Danby Rd, Suite 105			
City/PO: Ithaca		State: NY	Zip Code: 14850
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO <input type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Floodplain permit from the Town		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		_____ 0.71 acres	
b. Total acreage to be physically disturbed?		_____ 0.23 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 0.71 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			

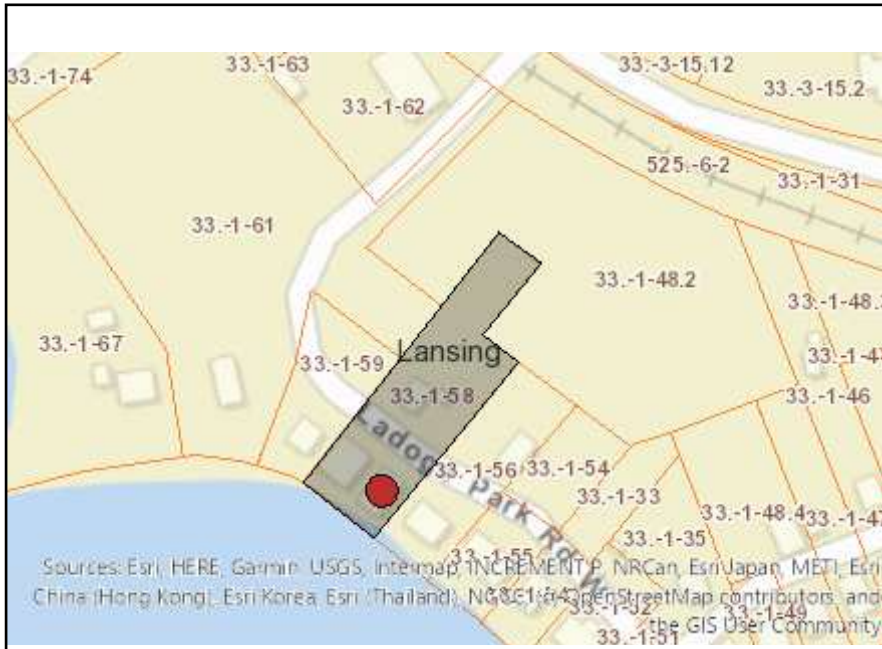
		Section 3, Item c.	
5. Is the proposed action,	NO		
		<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation services available at or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action? <b>No sidewalks</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies: Not applicable, Grading improvement only.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____			
_____			
_____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:		
<input checked="" type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input checked="" type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? Lake Sturgeon	NO	YES
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Yes, drainage will flow into Cayuga Lake.		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE**

Applicant/sponsor/name: Jason K. Demarest Architecture Date: 03/14/24  
 Signature:  Title: Architect





**Disclaimer:** The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	Yes
Part 1 / Question 15 [Threatened or Endangered Animal - Name]	Lake Sturgeon
Part 1 / Question 16 [100 Year Flood Plain]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
Part 1 / Question 20 [Remediation Site]	No

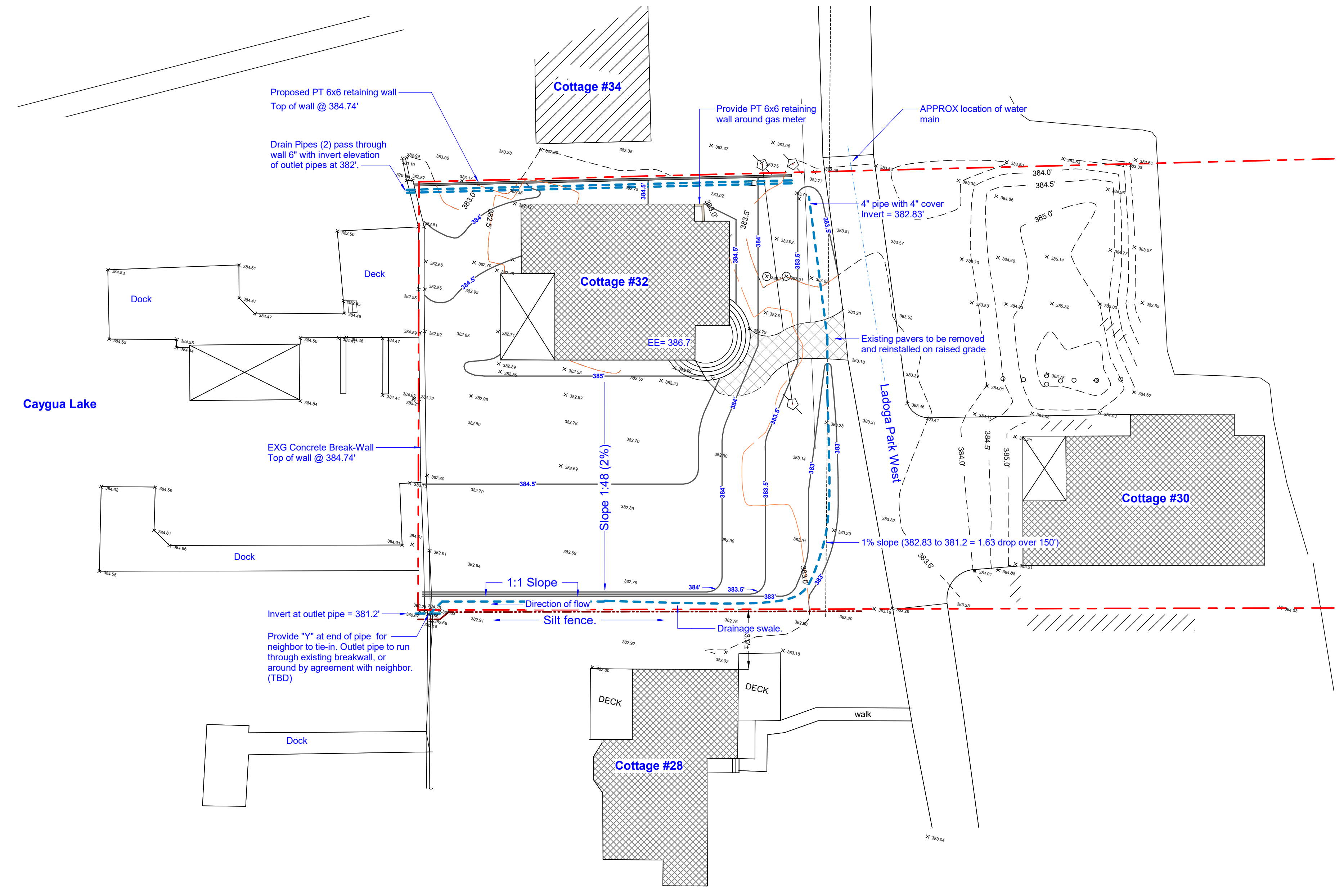


**CONSTRUCTION DOCUMENT**

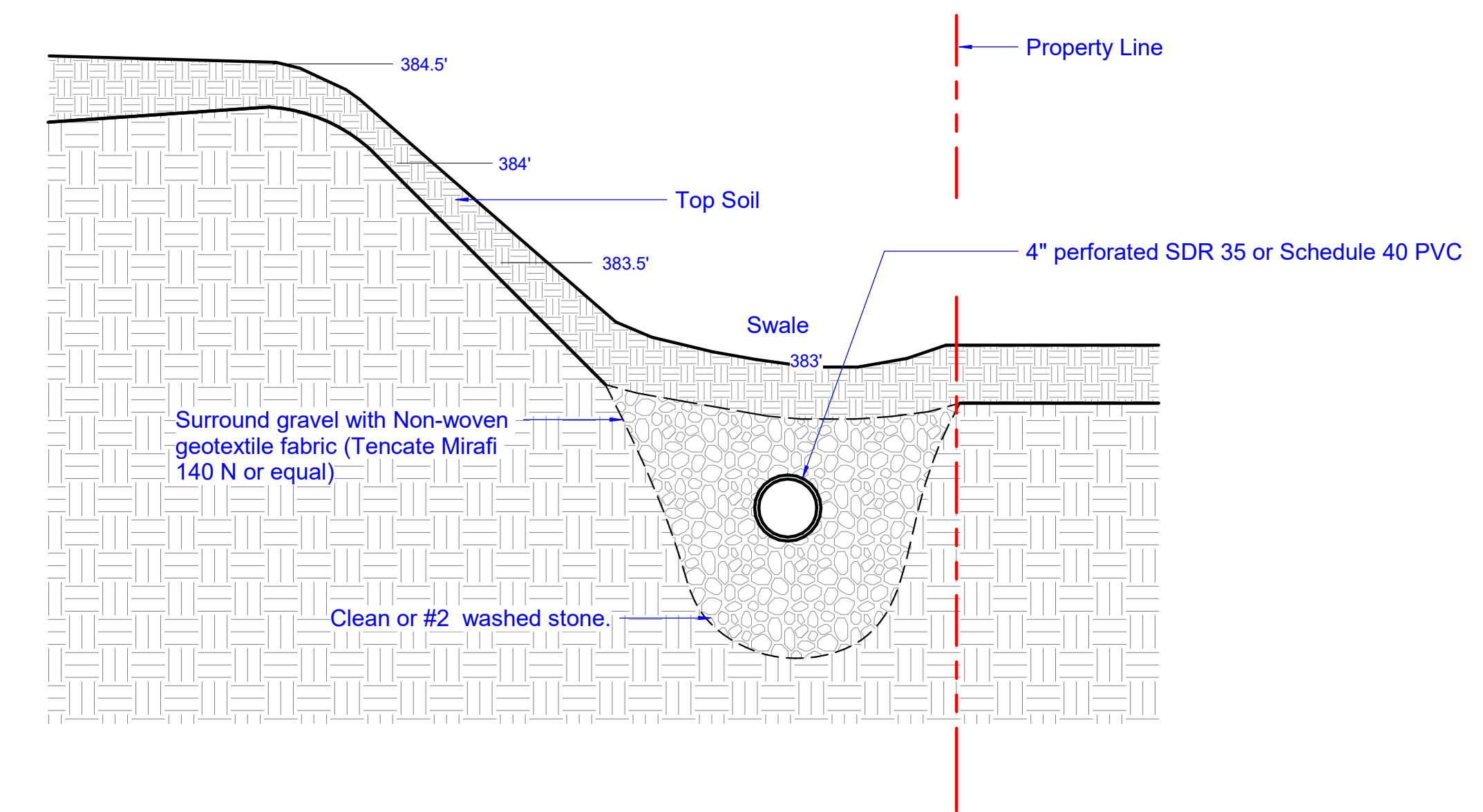
**Yard Leveling**  
 Lillian Babcock  
 32 Ladoga Park West  
 Lansing, NY  
 14882

Revision Schedule		
Number	Description	Date

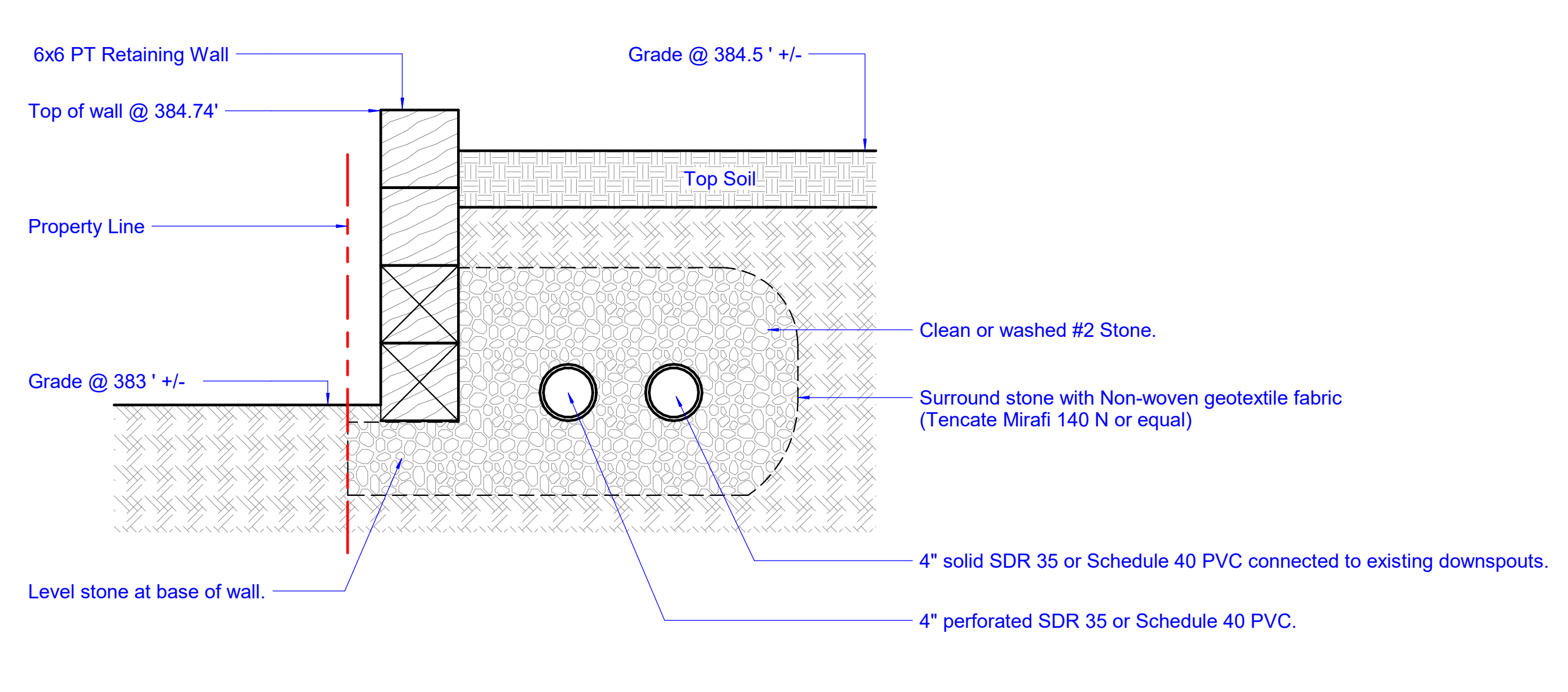
Grading Plan	
Project No:	BABL03
Date:	12/13/23
Drawn by:	VLF
Checked by:	JKD
<b>A0.01</b>	
Scale: As indicated	



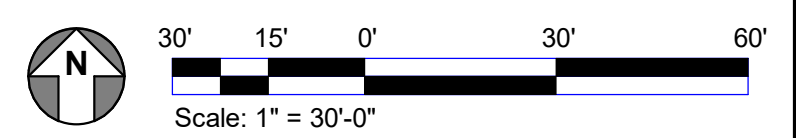
**① Grading Plan**  
 1/16" = 1'-0"



**② Drainage Detail 1**  
 1 1/2" = 1'-0"



**③ Drainage Detail 2**  
 1 1/2" = 1'-0"







Draft #:   1   Date:   4/8/2024  

Approved Date: \_\_\_\_\_

# Decommissioning Plan

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## North Triphammer Road

### Project #1 and #2

**Project #1 - SBL: #144-1-1.2 5MW Solar Facility**

**Project #2 - SBL#: 44-1-3.3 3MW Solar Facility**

Prepared for:

**Town of Lansing**

**Tompkins County, New York**

Prepared by:

NY Lansing I, LLC & NY Lansing II, LLC

P.O. Box 384

Callicoon NY, 12783

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**1. Introduction**

#1: NY Lansing I, LLC & #2: NY Lansing II, LLC (“Project Owner”), an affiliate of Delaware River Solar, LLC, proposes to build a photovoltaic (PV) solar facility (“Solar Facility”) at North Triphammer Road in the Town of Lansing (“Town”) under New York State’s Community Solar initiative. The Solar Facility is planned to have a nameplate capacity of approximately 5MW ac (MW) from Project #1 and 3MW ac from Project #2, to be constructed on private land (“Project Site”) leased by the Project Owner from the property owner (“Property Owner”).

This Decommissioning Plan (“Plan”) is being submitted to the Town as part of the application with respect to Town of Lansing Local Law #3 of 2020 Section 802.18 (“Solar Law”). The Solar Facility is considered a Solar Energy Facility as set forth in the Solar Law. The decommissioning requirement of the Solar Law reads as follows:

The decommissioning requirement for a Solar Facility set forth in §802.18.14 of the Solar Law read as follows:

*“802.18.14 Abandonment and Decommissioning. A Decommissioning Plan shall be submitted with each Application in accordance with § 802.21 of this Chapter. Approval of the Decommissioning Plan by the Town Planning Board shall be required, including under Site Plan review. Removal of Solar Energy Facilities must be completed in accordance with the Decommissioning Plan. If the Solar Energy Facility is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and impose a lien on the property to cover these costs to the municipality.*

**802.21.1** *A Decommissioning Plan shall, at a minimum, contain the following elements and meet the following requirements.*

- i. Specify when and what constitutes an event requiring decommissioning, including abandonment of the facility. In all cases the lack of production for 6 months (or for 12 of any 18 months) and the violation of any site plan conditions, the lack of a current permit or violation of permit conditions, including but not limited to maintenance of any required decommissioning bond or security, shall be an event requiring decommissioning.*
- ii. Specify the form and type of notice required to the Town in the event of any decommissioning, sale, transfer, partial transfer, assignment, or occurrence of any event which may result in an act or partial order requiring partial or complete decommissioning of the site.*
- iii. The means and methods by which utility interconnections will be removed and permitted by the utility provider, as well as all electrical and other safety precautions undertaken during removal.*
- iv. All decommissioning and restoration activities shall be completed within 150 days of the date decommissioning was ordered or required, including under the plan.*
- v. Demonstrate the removal of all Solar Panels, Battery Energy Storage Systems, wind turbines, electrical appurtenances, Towers, structures, equipment, security*

*barriers and transmission lines.*

*vi. Demonstrate the minimization of disruption to field drains and soils, and the remediation of drains and soils, including stabilization and revegetation of any sites or disturbances, including as minimize erosion. Decompaction of soils to 18 inches and removal of any installed materials to 4 feet is required. The Planning Board may allow the owner or operator to leave landscaping or designated belowgrade foundations in place to minimize erosion and disruption to vegetation in a proper case, but generally all of the New York Department of Agriculture and Markets' Guidelines for Agricultural Mitigation for Wind Power Projects or Solar Energy Projects, as applicable, shall be adhered to in any plan.*

*vii. Specify disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations, including the removal of any damaged or contaminated soils. No designation of any facilities by a 'beneficial use declaration' shall be permitted to vary this clean-up and remediation/ disposal rule.*

*viii. Include an expected timeline for execution, together with a cost estimate detailing the projected cost of executing the Decommissioning Plan, duly prepared and sealed by a Professional Engineer. Cost estimations must take inflation into account over the expected life of project, and have a mechanism to ensure the periodic updating and securitization of decommissioning costs."*

This Plan provides an overview of activities that will occur during the decommissioning phase of the Solar Facility, including activities related to the restoration of land, management of materials and waste, and responsibility of removal.

The Solar Facility is expected to have a useful life of thirty (30) years.

This Plan assumes the Solar Facility will be dismantled, and the Project Site restored to a state similar to its pre-construction condition, at the thirty (30) year anniversary of the Solar Facility's commercial operation date ("Expected Decommissioning Date"). This Plan also covers the case of the abandonment of the Solar Facility, for any reason, prior to the Expected Decommissioning Date.

Decommissioning of the Solar Facility will include the disconnection of the Solar Facility from the utility electrical grid and the removal of all Solar Facility components, including:

- Photovoltaic (PV) modules, module racking and supports
- Inverter units, substation, transformers, and other electrical equipment, including wiring cables
- Access roads and perimeter fence
- Inverter pad concrete foundations.

This Plan is based on current best management practices and procedures. This Plan may be subject to revision based on new standards and emergent best management practices at the time of decommissioning. Permits will be obtained as required and notification will be given to stakeholders prior to decommissioning.

**2. The Proponent**

The Project Owner will manage and coordinate the decommissioning process. The Project Owner will obtain all necessary regulatory approvals that may vary depending on the jurisdiction, project capacity, and site location. The Project Owner will be committed to the safety, health, and welfare of the hosting community.

The conditions and obligations of this Plan shall be bound upon the Project Owner, it heirs, executors, administrators, successors or assigns.

Contact information for the proponent is as follows through the permitting process. An agent of the project company will be identified prior to construction of the Solar Facility:

**Company:** NY Lansing I, LLC & NY Lansing II, LLC  
**Contact:** Mollie Messenger  
**Address:** PO Box 384 Callicoon, NY 12723  
**Telephone:** 845-800-8914  
**Email:** mollie.messenger@delawareriversolar.com

**2.1 Project Information**

**Address:** North Triphammer Road, Lansing  
**Tax ID:** Project #1 - SBL: #144-1-1.2 Project #2 - SBL#: 44-1-3.3  
**Project Size:** Project #1 - 5MW ac and Project #2 – 3MW ac  
**Property Owner:** John, James, Julie Young & Susan Barnett  
**Site Agreement:** Contract of Sale for Delaware River Solar Real Estate, LLC to acquire the site

**3. Decommissioning of the Solar Facility**

At the time of decommissioning, the installed components will be removed, reused, disposed of, and recycled, where possible. All removal of equipment will be done in accordance with any applicable laws and regulations, including without limitation, the local laws of the Town applicable to solar energy systems, and manufacturer recommendations. All applicable permits will be acquired.

The decommissioning process of the Solar Facility may commence for the following reasons:

- (a) Project Owner provides written notice to the Town of its intent to retire or decommission the Project (“Owner Decommissioning Notice”) for any reason, including the Solar Facility is damaged and will not be repaired or replaced,
- (b) the Solar Facility ceases to be operational for more than twelve (12) consecutive months, or
- (c) the expiration of the lease agreement with the Property Owner. In event the Project Owner fails to decommission the Solar Facility within three hundred sixty (360) days after providing Owner Decommissioning Notice or fails to respond with a reasonable explanation for cessation of operation of the Project within 60 days of the Town Decommissioning Notice, the Town may commence the decommissioning of the Project. The Town shall provide Project Owner sixty (60) days written notice

(“Town Decommissioning Notice”) prior to the commencement of any decommissioning of the Solar Facility by the Town. For the purposes of this Agreement, “ceases to be operational” shall mean no generation of electricity, other than due to repairs to the Project or causes beyond the reasonable control of the Project Owner.

**4.1 Equipment Dismantling and Removal**

Generally, decommissioning of a Solar Facility proceeds in the reverse order of the installation.

1. The Solar Facility shall be disconnected from the utility power grid.
2. PV modules shall be disconnected, collected, and disposed at an approved solar module recycler or reused / resold on the market.
3. All aboveground and underground electrical interconnection and distribution cables shall be removed and disposed off-site at an approved facility.
4. Galvanized steel PV module support and racking system support posts shall be removed and disposed off-site at an approved facility.
5. Electrical and electronic devices, including transformers and inverters shall be removed and disposed off-site by at approved facility.
6. Concrete foundations shall be removed and disposed off-site at an approved facility.
7. Fencing shall be removed and will be disposed off-site by at approved facility.

**4.2 Environmental Effects**

Decommissioning activities, particularly the removal of project components, could result in environmental effects similar to those of the construction phase. For example, there is the potential for disturbance (erosion/sedimentation) to adjacent watercourses or significant natural features. Mitigation measures similar to those employed during the construction phase of the Solar Facility will be implemented. These will remain in place until the site is stabilized to mitigate erosion and silt/sediment runoff and any impacts on the significant natural features or water bodies, if any, located adjacent to the Project Site.

Road traffic will temporarily increase due to the movement of decommissioning crews and equipment. There may be an increase in particulate matter (dust) in adjacent areas during the decommissioning phase. Decommissioning activities may lead to temporary elevated noise levels from machinery and an increase in trips to the Project Site. Work will be undertaken during daylight hours and conform to any applicable restrictions.

**4.3 Site Restoration**

Through the decommissioning phase, the Project Site will be restored to as natural a condition as possible within one year of removal and as close to its original state as reasonably possible. All project components (see Appendix 1) will be removed. Rehabilitated lands will be seeded with a low-growing species to help stabilize soil conditions, enhance soil structure, and increase soil fertility. After decommissioning, the Project Site will be primarily meadows with soil conditions in an improved state for agricultural use by allowing the land time to fallow over the life of the Project.



**4.4 Managing Materials and Waste**

During the decommissioning phase a variety of excess materials and wastes (see listed in Appendix 1) will be generated. Most of the materials used in a Solar Facility are reusable or recyclable and some equipment may have manufacturer take-back and recycling requirements. Any remaining materials will be removed and disposed of off-site at an approved facility. The Project Owner will establish policies and procedures to maximize recycling and reuse and will work with manufacturers, local subcontractors, and waste firms to segregate material to be disposed of, recycled, or reused.

The Project Owner will be responsible for the logistics of collecting and disposing or recycling the PV modules. Currently, some manufacturers and new companies are looking for ways to recycle and/or reuse solar modules when they have reached the end of their lifespan. Due to a recent increase in the use of solar energy technology, a large number of panels from a variety of projects will be nearing the end of their lifespan in 25-30 years. It is anticipated there will be more recycling options available for solar modules at that time. The Project Owner will dispose of the solar modules using best management practices at the time of decommissioning.

**4.5 Decommissioning During Construction or Abandonment Before Maturity**

In case of abandonment of the Solar Facility during construction or prior to the Expected Decommissioning Date, the same decommissioning procedures as for decommissioning after ceasing operation will be undertaken and the same decommissioning and restoration program will be honored. The Solar Facility will be dismantled, materials removed and disposed, the soil that was removed will be graded and the site restored to a state similar to its preconstruction condition.

**4.6 Decommissioning Notification**

Decommissioning activities may require the notification of stakeholders given the nature of the works at the Project Site. The local municipality will be notified prior to commencement of any decommissioning activities. Prior to decommissioning, Project Owner will update their list of stakeholders and notify appropriate municipalities of decommissioning activities. Federal, county, and local authorities will be notified as needed to discuss the potential approvals required to engage in decommissioning activities.

**4.7 Approvals**

Well-planned and well-managed renewable energy facilities are not expected to pose environmental risks at the time of decommissioning. Decommissioning of the Solar Facility will follow standards of the day. Project Owner will ensure that any required permits are obtained prior to decommissioning.

This Decommissioning Plan may be updated as necessary in the future to ensure that changes in technology and site restoration methods are taken into consideration.

**5. Cost of Decommissioning and Responsibility of Removal**

The current estimated costs indicated on Appendix 2 are the costs, that the contractor anticipates to install and commission the Solar Facility. During the Special Permit review process, the Project Owner will revise the estimated costs to the extent any site plan changes are made.

While the salvage value of valuable recyclable materials (aluminum, steel, etc.) is not factored into the decommissioning costs, the salvage value of such materials (determined on market rates at the time of salvage) is expected to be an amount that could substantially cover the estimated decommissioning cost.

**APPENDIX I**

**Management of Excess Materials and Waste**

Material / Waste	Means of Managing Excess Materials and Waste
PV Modules	If there is no possibility for reuse, the panels will either be returned to the manufacturer for appropriate disposal or will be transported to a recycling facility where the glass, metal and semiconductor materials will be separated and recycled.
Metal array mounting racks and steel supports	These materials will be disposed off-site at an approved facility.
Transformers and substation components	The small amount of oil from the transformers will be removed on-site to reduce the potential for spills and will be transported to an approved facility for disposal. The substation transformer and step-up transformers in the inverter units will be transported off-site to be sent back to the manufacturer, recycled, reused, or safely disposed off-site in accordance with current standards and best practices.
Inverters, fans, fixtures	The metal components of the inverters, fans and fixtures will be disposed of or recycled, where possible. Remaining components will be disposed of in accordance with the standards of the day.
Gravel (or other granular)	It is possible that the municipality may accept uncontaminated material without processing for use on local roads, however, for the purpose of this report it is assumed that the material will be removed from the project location by truck to a location where the materials can be processed for salvage. It is not expected that any such material will be contaminated.
Geotextile fabric	It is assumed that during excavation of the components, a large portion of the geotextile will be “picked up” and sorted at the reprocessing site. Geotextile fabric that is remaining or large pieces that can be readily removed from the excavated aggregate will be disposed of off-site at an approved disposal facility.
Concrete inverter/transformer Foundations	Concrete foundations will be broken down and transported by a certified and licensed contractor to a recycling or approved disposal facility.
Cables and wiring	The electrical line that connects the utility electrical grid to the point of common coupling will be disconnected and disposed of at an approved facility. Support poles, if made of untreated wood, will be chipped for reuse. Associated electronic equipment (isolation switches, fuses, metering) will be transported off-site to be sent back to the manufacturer, recycled, reused, or safely disposed off-site in accordance with current standards and best practices.
Fencing	Fencing will be removed and recycled at a metal recycling facility.
Debris	Any remaining debris on the site will be separated into recyclables/residual wastes and will be transported from the site and managed as appropriate.

**APPENDIX 2**

**Estimated Decommissioning Costs <sup>(1)</sup> Project #1 5MW ac**

<b>Tasks</b>	<b>Estimated Cost (\$)<sup>(1)</sup></b>
Remove Panels	\$6,500
Remove Racking Wiring	\$6,000
Dismantle Racks	\$30,000
Remove and Load Electrical Equipment	\$4,000
Break up Concrete Pads	\$4,000
Remove Racks	\$20,000
Remove Cable	\$14,000
Remove Ground Screws and Power Poles	\$34,000
Remove Fence	\$10,000
Grading	\$7,500
Seed Disturbed Areas	\$2,000
Truck to Recycling Center	\$7,000
Administration	\$5,000
<b>Decommissioning Cost – Current</b>	<b>\$150,000</b>

(1) Does NOT include salvage value.

**Estimated Decommissioning Costs <sup>(1)</sup> Project #2 3MW ac**

<b>Tasks</b>	<b>Estimated Cost (\$)<sup>(1)</sup></b>
Remove Panels	\$3,900
Remove Racking Wiring	\$3,600
Dismantle Racks	\$18,000
Remove and Load Electrical Equipment	\$2,400
Break up Concrete Pads	\$2,400
Remove Racks	\$12,000
Remove Cable	\$8,400
Remove Ground Screws and Power Poles	\$20,400
Remove Fence	\$6,000
Grading	\$4,500
Seed Disturbed Areas	\$1,200
Truck to Recycling Center	\$4,200
Administration	\$3,000
<b>Decommissioning Cost – Current</b>	<b>\$90,000</b>

**Total Estimated Decommissioning Costs <sup>(1)</sup> Project #1 and #2**

<b>Tasks</b>	<b>Estimated Cost (\$) <sup>(1)</sup></b>
Remove Panels	\$10,400
Remove Racking Wiring	\$9,600
Dismantle Racks	\$48,000
Remove and Load Electrical Equipment	\$6,400
Break up Concrete Pads	\$6,400
Remove Racks	\$32,000
Remove Cable	\$22,400
Remove Ground Screws and Power Poles	\$54,400
Remove Fence	\$16,000
Grading	\$12,000
Seed Disturbed Areas	\$3,200
Truck to Recycling Center	\$11,200
Administration	\$8,000
Decommissioning Cost – Current	\$240,000



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December 27, 2023

Town of Blooming Grove Zoning Board of Appeals  
Town of Blooming Grove Town Hall  
6 Horton Road  
Blooming Grove, NY 10914

To: Members of the Town of Blooming Grove Zoning Board of Appeals

Re: Proposed Solar Energy Facility Located on Marycrest Road

Our firm represents NY Blooming Grove (Marycrest Road), LLC, an affiliate of Delaware River Solar (“Applicant”), in connection with its efforts to develop a five (5) megawatt alternating current (“MWac”) large-scale solar energy system (“Project”) on one parcel of land located at 39, 49 Marycrest Road, tax map number 55-1-12.1 (“Property”), in the Town of Blooming Grove, New York (“Town”). The Property is located in the Rural Residential (“RR”) District, as well as the Ridgeline Overlay and Surface Water Overlay Districts.

This letter is in support of the Applicant’s application for area variances (“Application”). The Application is being submitted to the Town of Blooming Grove Zoning Board of Appeals (“ZBA”) to permit deviations from certain setback and buffer requirements provided in Sections 235-45.7 (A) (1) and 235-14.4 (E)(1)(a) of the Town of Blooming Grove Town Code (“Town Code”).

The Town Code requires that Large-Scale Solar Energy Systems—as that term is used in the Town Code—be setback at least 200 feet from all roads and property lines. Town Code § 235-45.7 (A)(1). However, the Project layout requires a lesser setback from the northern rear property line and the western side property line. As shown on the site plan set on the “General Layout” page, the proposed setback from the northern rear property line is 115 feet and the proposed setback from the western side property line is 100 feet. Additionally, the Project layout requires relief in three locations on the Project site from the Town Code’s requirement that a “one-hundred-foot buffer strip shall be maintained along the edge of any stream, lake, pond, or other water body, including wetlands”. Town Code § 235-14.4 (E)(1)(a). As such, the Applicant is seeking the following area variances: (1) a 100-foot setback with respect to the western side property line, which borders residential properties which will be screened by significant existing tree coverage; (2) a 115-foot setback with respect to the northern rear property line, which borders significant vacant, wooded land; and (3) a ten (10) foot setback, a thirty-one (31) foot setback and

a thirty-two (32) foot setback with respect to three small onsite wetlands, which are more fully detailed in the site plan set. The Project will comply with the setback requirement as to the eastern and southern property lines. Because solar energy facilities are public utilities for zoning and land use purposes, the Application is reviewed pursuant to the variance standard applicable to public utilities, rather than the area variance test under N.Y. Town Law § 267-b(3).

The Application is being submitted to the ZBA contemporaneously with the Applicant’s application to the Town of Blooming Grove Planning Board. Given that the Project does not comply with the Town Code’s setback requirements, the Applicant is proceeding directly to the ZBA with its Application, in accordance with Town Code § 235.45.7 (A)(1) and New York Town Law §§ 274-a(3) and 274-b(3).

**I. The Application is reviewed pursuant to the variance standard applicable to public utilities.**

The Court of Appeals in *Consolidated Edison Co. of New York, Inc. v. Hoffman*, 43 N.Y.2d 598 (1978) (“*Hoffman*”) held that public utilities are subject to an alternative standard when seeking variances. The *Hoffman* case involved the proposed addition of a 565-foot wet cooling tower at the Indian Point nuclear plant operated by Consolidated Edison (“Con Ed”) to mitigate the negative environmental impacts on the Hudson River from its prior cooling system. After Con Ed’s building permit application was denied on the grounds that the tower exceeded the 40-foot building height limit in the zoning district and would result in prohibited uses, Con Ed sought a variance from the Village of Buchanan Zoning Board of Appeals (“Buchanan ZBA”). The Buchanan ZBA denied the application, finding that Con Ed had not shown any practical difficulties requiring the variance, had not demonstrated it was the minimal variance necessary, and failed to adequately consider alternatives.

Once this denial was challenged and made its way to the Court of Appeals, the Court determined that although the traditional approach is to require an applicant for a variance to demonstrate an unnecessary hardship,<sup>1</sup> such showing is “not appropriate where a public utility such as Con Edison seeks a variance, since the land may be usable for a purpose consistent with the zoning law, the uniqueness may be the result merely of the peculiar needs of the utility, and some impact on the neighborhood is likely.” *Hoffman*, 43 N.Y.2d at 607. Instead, utilities can demonstrate entitlement to a variance by showing that the proposed “modification is a public necessity ... required to render safe and adequate service[.]” *Id.* at 610 (internal citations omitted). And, “where the intrusion or burden on the community is minimal” the Court determined that the requisite showing “should be correspondingly reduced.” *Id.*

Since the *Hoffman* case, application of the alternative standard for public utility uses in the context of local land use approvals has been expanded given the more inclusive definition of a public utility developed by the Court of Appeals in *Cellular Tel. Co. v. Rosenberg*, 82 N.Y.2d 364 (1993) (“*Rosenberg*”). There, the Court defined “public utility” as

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<sup>1</sup> This requires the applicant to demonstrate that the property cannot yield a reasonable return if used for a permitted use, that the circumstances causing the hardship are unique to the subject property, and that the proposed use will not alter the essential character of the neighborhood. *Hoffman*, 43 N.Y.2d at 607.

“‘a private business, often a monopoly, which provides services so essential to the public interest as to enjoy certain privileges such as eminent domain and be subject to such governmental regulation as fixing of rates, and standards of service.’ Characteristics of the public utility include (1) the essential nature of the services offered which must be taken into account when regulations seek to limit expansion of facilities which provide the services, (2) ‘operat[ion] under a franchise, subject to some measure of public regulation,’ and (3) logistic problems, such as the fact that ‘[t]he product of the utility must be piped, wired, or otherwise served to each user \* \* \*[,] the supply must be maintained at a constant level to meet minute-by-minute need[, and] [t]he user has no alternative source [and] the supplier commonly has no alternative means of delivery.’”

*Rosenberg*, 82 N.Y.2d 371 (internal citations omitted).

This much broader definition has resulted in application of the variance standard articulated in *Hoffman* to siting facilities, rather than just modifications or expansions to existing facilities, and to less “traditional” public utilities such as cellular telephone companies and renewable energy projects. *See Rosenberg*, 82 N.Y.2d 372 (The *Hoffman* case “applies to entirely new siting of facilities, as well as the modification of existing facilities.”). Based on the reasoning in this line of cases, New York courts have annulled variance denials for renewable energy projects based on Town Law § 267-b, and remanded such applications to local ZBA’s for review under the public utility variance standard. *See Delaware River Solar, LLC, et al. v. Town of Aurora Zoning Bd. of Appeals*, Index No. 808123/2022 (Sup. Ct. Erie Cty. Nov. 7, 2022); *see also Cipriani Energy Grp. Corp. v. Zoning Bd. of Appeals of the Town of Minetto, New York et al.*, EFC-2022-0043 (Sup. Ct. Oswego Cty. Apr. 12, 2022) (“[*Rosenberg*] directly applies to this situation and compels the determination as a matter of law that Cipriani [a solar developer] is a public utility.”); *Freepoint Solar LLC and FPS Potic Solar LLC v. Town of Athens Zoning Bd. of Appeals*, EF2021-795 (Sup. Ct. Greene Cty. Aug. 18, 2022) (vacated local ZBA’s denial of a use variance under Town Law § 267-b for failing to apply the use variance test under *Hoffman*). Zoning Boards of Appeal have also applied the public utility variance standard to variance applications submitted for solar energy facilities as a matter of course. *See Town of Binghamton Zoning Bd. of Appeals Decision*, dated June 14, 2022 (applying the public utility variance standard to a community solar developer and granting a use variance); *see Town of Oswego Zoning Bd. of Appeals Resolution*, dated Jan. 19, 2023 (“the Applicant ... further addressed the applicable use variance criteria the Courts of this State have applied to renewable energy projects ... declaring such projects to be public utilities and thus reviewable under the less-restrictive *Hoffman* standard of review, which was recently applied by the New York State Supreme Court in a legal proceeding involving the neighboring Town of Minetto ... the Project is a public utility and thus is afforded the standard of review for a [] variance articulated in *Hoffman*[] ... By its very nature, clean energy is a public necessity as proclaimed by the State of New York in its Clean Energy Standard and further codified in the Climate Leadership and Community Protection Act[.]”). These decisions are attached hereto as **Exhibit A**.



As in the above cases, this Project meets each one of the *Rosenberg* factors. Firstly, the Project will be owned by NY Blooming Grove (Marycrest Road), LLC, an affiliate of Delaware River Solar—a private solar energy company that operates to provide clean, renewable electricity to the grid for consumers. Further, it cannot be argued that electricity is not essential to our everyday life. As former U.S. Secretary of Energy Hazel O’Leary said, “[e]lectricity is just another commodity in the same way that oxygen is just another gas.”<sup>2</sup> Second, the Project will be subject to “regulation and supervision” by the Public Service Commission (“PSC”) because it will generate electricity. *See W. Beekmantown Neighborhood Ass’n, Inc. v. Zoning Bd. of Appeals of Town of Beekmantown*, 53 A.D.3d 954, 956 (3d Dep’t 2008) (citing N.Y. PUB. SERV. LAW §§ 2(2–b), (12), (23); § 5(1)(b); § 66–c). The Project will be an integral part of the electricity generation and transmission system, generating clean, renewable energy and distributing it to consumers through the electric grid—a utility in its own right, subject to significant public regulation. And even though the more modern utility model has decoupled generation and transmission, companies that generate electricity for sale to consumers through the State’s transmission system are still treated as public utilities. Specifically, as a community solar development, installation and operation of the Project will be subject to the provisions of the PSC’s “New York State Standardized Interconnection Requirements and Application Process for New Distributed Generators and Energy Storage Systems 5MW or Less Connected in Parallel with Utility Distribution Systems.” *See* N.Y. PUB. SERV. COMM’N, Case 15-E-0082, *Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions For Implementing a Community Net Metering Program*.

Lastly, the product—electricity—can only be distributed by way of the electric grid. There is no other feasible method for an electricity generator to deliver electricity to consumers. Both the generator and the consumer are beholden to the transmission system to send and receive electricity service, and because of the ever-present demand for power, adequate supply must be maintained at all times. Further, there are significant logistical constraints in siting solar projects. Most properties in a municipality are not economically feasible for solar development. The size and layout of the parcel have to be at such a scale to accommodate the project, which often cannot be reduced to fit a smaller property given that solar projects are only economically feasible at a certain size. The property must also be located near existing utility infrastructure—namely, transmission lines and a substation—in order to interconnect the project to the utility grid. Without these crucial pieces, a solar project simply could not go forward. There is also the question of topography of the site and solar access. Installation of solar panels is significantly more expensive on certain challenging terrain (*e.g.*, excessive wetlands and steep slopes). And access to sunlight at the site as it exists, without having to modify it at exponential cost, is similarly crucial. Lastly, community solar sites are often leased, making it challenging to find a willing property owner.

Here, the Property was carefully selected to meet the needs of a community solar project. The Applicant began its search for an adequate project site by evaluating the capacity of the Orange and Rockland Utilities, Inc. (“Orange & Rockland”) Substation network. Once it was confirmed that this system had excess capacity, the Applicant began looking for available parcels. A few parcels were identified, which were then further analyzed to determine if they met certain

<sup>2</sup> Quoted in Ralph Cavanagh, “Restructuring for Sustainability: Toward New Electric Service Industries,” *Electricity Journal* (July 1996): 71.

criteria tied to lot size, slopes, and the presence of wetlands, waterbodies, and extensive tree coverage. The Applicant and its consultants reviewed the topography, slope, and elevation data; the New York State Department of Environmental Conservation (“NYSDEC”) and the U.S. Fish & Wildlife Service National Wetlands Inventory (“NWI”) data to identify any mapped wetlands onsite; applied local zoning requirements to the identified parcels to determine useable acreage; evaluated expected substation and feeder capacity; and assessed any substation upgrades that would be required by the Project. This extensive analysis identified the Property as an ideal candidate for the Project, and the Applicant then entered into a lease agreement with the landowners for part of the Property to develop a community solar facility and is applying to the Planning Board in January 2024 to begin the permitting process.

The roughly 59-acre Property is comprised of relatively flat land, which provides sufficient area to build and maintain a Large-Scale Solar Energy System without needing to heavily modify the site. This avoids any additional financial burden that would otherwise be passed on to energy consumers, or which would simply prohibit development of the Project. The Property is also near the point of interconnection (“POI”) (*i.e.*, where the Project physically connects to the Orange & Rockland transmission system)—a necessary piece of the puzzle where the Applicant connects the Project to the grid in order to transmit the power to consumers. This proximity to the POI allows the Applicant to interconnect to the grid directly from the Property, without intruding on any neighboring properties. And, Orange & Rockland has verified that both the feeder and substation have enough available capacity to accommodate a project of this size at a reasonable cost. Finding suitable land with available interconnection capacity is often the most challenging aspect of siting solar energy systems, since capacity is scarce and the costs to interconnect a solar project can be prohibitive. In this case, these criteria were met.

This unique combination of site characteristics provides an opportunity to build an economically feasible solar energy facility on a relatively small project site. The sole reason that the area variances are needed is that the Town Code requires Large Scale Solar Energy Systems to be set back 200 feet from all property lines and the Town Code also requires all uses in the Surface Water Overlay District to be set back 100 feet from all surface bodies of water, which includes wetlands. As seen on the Project site plan set on the “General Layout” page, the Project meets the 200-foot setback requirement with respect to the property boundary lot lines to the east and south of the Project. However, the necessary layout of the Project requires a 115-foot setback to the north property line, a 100-foot setback to the west property line and several encroachments into the 100-foot wetland buffer setback. The Project cannot feasibly be built on the Property without encroaching within the 200-foot setback area to the north and west of the Project site and within the 100-foot wetland buffer.

Nevertheless, these decreased setbacks will not impact neighboring property owners or the community at large given the use of such parcels and existing buffers. The northern rear property line borders wooded and forested land and provides significant, natural screening. To the south of the Project there is a small collection of residential properties, however, the Project will be set back significantly from the southern property line and existing vegetation will screen the Project from these properties. Likewise, the residential properties to the east and west of the Project site will be significantly buffered by preexisting vegetative screening. As such, the Property is well-suited for a solar project of this scale.

**a. The Project meets the public utility standard.**

The Project is a public utility use, and a request for a variance for the Project is reviewed under the variance standard articulated in *Hoffman*.<sup>3</sup> This only requires a showing that the Project is a public necessity, needed to provide safe and adequate service. As stated above, electricity generation is undeniably a necessity. There is a public necessity for the Project, which will provide extensive public benefits: (a) the development of the Project will generate local, county, and school tax revenue while not increasing demand on Town infrastructure; (b) energy generated from the Project will be distributed to the utilities’ electrical grid and will directly benefit utility customers (residential and/or small businesses) enrolled in the “community solar program” via a discount; and (c) residential customers will have the option to source solar energy which they may not have the capital to generate on their own.

Moreover, the Project will assist the State to achieve its aggressive climate goals, which have not yet been achieved. The Climate Leadership and Community Protection Act (“CLCPA”) outlines interrelated climate mandates, including: “to reduce greenhouse gas emissions from all anthropogenic sources 100% over 1990 levels by the year 2050, with an incremental target of at least a 40% reduction in climate pollution by the year 2030.”<sup>4</sup> To date, the State has not met all mandates imposed by the CLCPA. The State still needs 20 GW of new renewable generation and transmission to meet the 2030 goals—meaning, the “State will have to increase the rate at which renewable electricity projects are permitted and approved for interconnection to the State electric grid as over the last 20 years the State has only added 12.9 gigawatts of projects of both renewable and fossil projects.”<sup>5</sup> This has created an additional public need for increased renewable energy generation siting throughout the State.

**b. The Project presents little to no burden on the community.**

Further, as noted in *Hoffman*, where there is little to no burden on the community, the requisite showing from the utility is correspondingly reduced. Here, the Project will not present any significant burden on the community, but will instead be a safe, quiet, clean generator of electricity. The Project is proposed to be sited in an area surrounded by vacant land and wooded areas, as well as residential properties. There is a significant forested buffer between the solar panels on the Project site and nearby residential properties to the north, east, south and west, further

<sup>3</sup> Courts that have considered the question have determined that a renewable energy project is a public utility. See *W. Beekmantown Neighborhood Ass’n, Inc. v. Zoning Bd. of Appeals of Town of Beekmantown*, 53 A.D.3d 954, 956 (3d Dep’t 2008) (where the Third Department upheld the ZBA’s determination that wind turbines were a “public utility” under the zoning law); see also *Wind Power Ethics Group (WPEG) v. Zoning Bd. of Appeals of Town of Cape Vincent*, 60 A.D.3d 1282, 1283 (4th Dep’t 2009) (where the Fourth Department upheld the ZBA’s classification of a series of wind-powered generators as a utility within the meaning of the zoning law which defined a utility as “telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities.”).

<sup>4</sup> S.6599, Reg. Sess. (N.Y. 2019) (Relates to the New York state climate leadership and community protection act) at § 2(a).

<sup>5</sup> N.Y.S. COMPTROLLER, *Renewable Electricity in New York State, Review and Prospects* (Aug. 2023) at 5; see also NYISO, *Short-Term Assessment of Reliability: 2023 Quarter 2* (July 2023) at 29.

limiting the potential view of the Project from residences in the area. Also, long stretches of property boundary lines at the Project site border undeveloped wooded and forested land, not private property owners. The portion of the Property to be used for the Project is also undeveloped, with no public water or sewer facilities—and no municipal water or sewer facilities will be required for the Project—making the Property more suitable for a community solar project than residential development. Once constructed, the Project will have negligible impacts on traffic in the area, as the Project will only be visited a few times per year for routine maintenance and inspections. The landowners prefer development of a temporary community solar farm over a permanent development on the land, but without the Project, much more intensive permanent land uses are possible. Lastly, the Applicant submitted a Full Environmental Assessment Form (“FEAF”) Part I as part of its initial application, as required by the State Environmental Quality Review Act (“SEQRA”), which indicated that the Project will not result in stormwater impacts, will not impact wetlands or waterbodies, will not create a new demand for water or energy or generate wastes, will not generate air emissions or noise once installed, will not result in any traffic impacts, and will not impact a designated significant natural community or critical environmental area. Thus, the Applicant is seeking to convert largely unused land to an economically beneficial site with zero emissions, fumes, or odors, no traffic impacts, and little to no noise above background levels.

Moreover, the Project actually presents *net benefits* to the community. As noted above, because the Applicant is proposing a community solar project, residents and local businesses can use the electricity generated from the Project at a lower cost. They would receive electricity from the transmission utility (*i.e.*, Orange & Rockland) in the same manner as they do now, but with a discount—and the added benefit of knowing it is being generated from a renewable source in their own neighborhood. Lastly, the installation, operation, and removal of the Project will impact the land and subsequent future uses to a lesser extent than would other current land use options. The solar posts are pile driven or screwed in place, creating minimal disturbance during installation. The racking system that holds the solar panels is elevated off the ground, leaving the area under and between the solar arrays as grassland or meadow ecosystems, planted with native grasses and pollinator species to benefit a host of wildlife. After construction, soils on site will not be disturbed, but will instead be left fallow to build organics and other important soil components overtime. Disturbance to the land that would need to be restored upon decommissioning is generally limited to removal of the panels along with their racking and posts, and any installed concrete pads for inverters or other similar equipment. The access road will be removed, unless the owner requests otherwise. At such time, the Applicant (then the Project Operator) must decommission the Project, remove all components, and restore the land to a future use deemed acceptable by the landowners and Town. This decommissioning work will be ensured by a security instrument held by the Town, in an amount deemed acceptable to the Town.

**II. If applied, the area variance requests meet the five-factor test under New York Town Law § 267-b(3).**

As noted above, the standard variance test is inapplicable to the proposed Project. However, if applied, the application satisfies the balancing test set forth in N.Y. Town Law § 267-b(3) for area variance applications. In conducting this balancing test, the ZBA shall consider

the following factors: “Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance;” “[w]hether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, other than an area variance; “[w]hether the requested area variance is substantial;” “[w]hether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district;” and “[w]hether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the [ZBA] but shall not necessarily preclude the granting of the area variance.” For the reasons outlined below, the ZBA is respectfully requested to grant the requested area variances.

**a. Granting the area variance requests will not result in an undesirable change to the character of the community or impose a detriment to nearby properties.**

The requested area variances will not cause an undesirable change to the essential character of the neighborhood because an allowable use is proposed. The Project is located in the RR District, where Large-Scale Solar Energy Systems are special permitted conditional uses, subject to site plan approval and other applicable requirements. Town of Blooming Grove Local Law 6 of 2023 (“Solar Law”). Section 235-46 (A) of the Town Code proclaims the Town’s goals of “[P]ermit and regulate solar energy systems and equipment and the provision of adequate sunlight and convenience of access necessary therefor; to balance the potential impact on neighbors when solar collectors may be installed near their property, while preserving the rights of property owners to install solar energy systems in accordance with applicable laws and regulations; and to recognize solar energy as a source for current and long term energy sustainability.” Construction of the Project, which will introduce renewable energy generation into the community, furthers these goals and the stated intention of the Town to promote them.

When the Town drafted the Town Code and amended Solar Law to regulate solar energy systems, the Town Board approved the inclusion of Large-Scale Solar Energy Systems (like the Project) as a permitted conditional use in the RR District. The fact that the Town Board designated such solar facilities as a permitted use in the RR District is a legislative finding that the Project is appropriate and thus consistent and in harmony with the community plan. *See North Shore Steak House, Inc. v. Bd. of Appeals of Inc. Vill. of Thomaston*, 30 N.Y.2d 238, 243 (1972) (“The inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood.”). Moreover, any legislative action by the Town Board that involves the adoption of an amendment or addition to the Town Code must be in conformance with the Town’s comprehensive plan. Clearly, the Town Board spent significant time and resources to amend the Town Code to permit Large-Scale Solar Energy Systems in the RR District and throughout the Town. Otherwise, the Town Board would not have adopted such Town Code amendments.

As noted above, the Project will not adversely affect any nearby properties. There will be no significant impacts from the Project (e.g., visual, noise, glare, etc.) on surrounding properties that would result from granting the area variances. The Applicant is seeking to convert largely unused land to an economically beneficial site with zero emissions, fumes, or odors, no

traffic impacts, and little to no noise above background levels. The Project will be sited in a mixed-use area, with sparsely populated rural residential land and vacant wooded land. The Project meets the 200-foot setback requirement with respect to the property boundary lot lines to the east and south of the Project. However, the necessary layout of the Project requires a 100-foot setback to the north and west property boundary lot lines and several encroachments into the 100-foot wetland buffer. The Project will only be minimally visible from the Property, as existing vegetation surrounding the entire Project site will limit the view of the Project from residential properties.

As such, granting the area variances will not create an undesirable change to or negative impact on the community or neighboring properties.

**b. There is no other feasible method for the Applicant to pursue.**

Evaluation of this factor requires consideration of whether an applicant can achieve its objective without the requested area variances. There is no financially feasible way to provide for the 200-foot setback to every adjoining property boundary lot line and the 100-foot wetland buffer. The developable area on the Property, when these requirements are applied, is too small to accommodate a financially viable solar project. Given the interconnection costs, the cost of construction, materials, labor, etc., a solar project must be a certain size in order to be financeable. And an alternative that does not allow the applicant to achieve the desired benefit is not truly a feasible alternative to obtaining an area variance. *See Baker v. Brownlie*, 248 A.D.2d 527 (2d Dep’t 1998) (granting an area variance where the board’s determination that the applicant had alternative means of achieving the benefit was “clearly erroneous,” because the applicant’s objective was to face the proposed patio toward the water, not merely to build a patio).

Thus, the Applicant must receive the area variances to construct the Project.

**c. The area variances are not substantial.**

The requested area variances are not substantial given the location of the Property and the lack of negative impacts on the neighborhood and surrounding properties. The Project will be sited in a mixed-use neighborhood, with populated residential land and substantial areas of vacant wooded land. As discussed above, the Project requires a 115-foot setback to the north property boundary lot line, a 100-foot setback to the west property boundary lot line and several encroachments into the 100-foot wetland buffer measuring 10 feet, 31 feet and 32 feet, respectively.

As mentioned, it is unlikely that the Project will be visible—with or without the area variances. Thus, there will be no measurable differences in impacts on the neighborhood (which are already minimal) as a result of granting the requested area variances. *See Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Zoning Bd. of Appeals of Town/Village of Harrison*, 296 A.D.2d 460 (2d Dep’t 2002) (overturning ZBA’s denial of variance requested 77% increase over the maximum height permitted by code where there was no evidence in the record indicating that the variance would be detrimental to the health, safety, and welfare of the neighborhood or community.).

Additionally, consideration of the percentage deviation alone is not an adequate indicator of the substantiality of a variance application. The totality of relevant circumstances must be evaluated in determining whether the variance sought is a substantial one. This is a fact-based determination. *See* 2 N.Y. ZONING LAW & PRAC. § 29:15 (2021); *see also* *Wambold v. Vill. of Southampton Zoning Bd. of Appeals*, 140 A.D.3d 891 (2d Dep't 2016) (where the court upheld the Zoning Board of Appeal's grant of the area variance even though it was substantial *since the court found no evidence that the variance would have a detrimental effect* on the character of the neighborhood, or physical and environmental conditions, nor would the variance impose a detriment to the health, safety, or welfare of the community.") (emphasis added). Here, even if the requested area variances were substantial, given the complete lack of significant negative impact on the surrounding properties or on the overall character or condition of the community, the requested area variances should be granted.

**d. The area variances will not have any negative impact on the physical or environmental conditions of the neighborhood, and will instead have a net beneficial impact.**

The granting of the area variances will not have a significant undesirable effect or impact on the physical conditions in the neighborhood or district because, as explained above, it would not change the allowable use or increase the impact from the allowable use. The Property is zoned in the RR District, which conditionally permits Large-Scale Solar Energy Systems subject to site plan approval and adherence to additional requirements in Town Code § 235-45.7.

Further, the Project does not pose any significant environmental impacts to the community, and instead, presents opportunities for *positive* impact as a safe, quiet, clean generator of electricity. The immediate area consists of rural residential and undeveloped, wooded land. Adding a solar development to the makeup of this neighborhood will not present a significant impact on residential or other properties. Also, the portion of the Property to be leased to the Applicant is largely vacant, and no municipal water or sewer facilities will be required for the Project—making the Property more suitable for a solar project than agricultural or residential development. Additionally, solar developments like the Project often blend seamlessly into rural areas as they can be easily screened, do not impede the rural, open space feel of such neighborhoods, and emit zero emissions, fumes or odors and little to no noise. Installation of the Project will be minimally invasive and once installed, operation will present near-zero impact.

As part of the project development, the Applicant will implement erosion control and drainage measures, conduct removal of existing vegetation only to the extent necessary and in compliance with applicable guidelines, and avoid any safety concerns from possible subsidence, landslides, flooding, etc., and will obtain the necessary general construction stormwater permits from the NYSDEC. Additionally, solar developments are semi-permanent and a solar installation like the Project can be fully removed at the end of its useful life leaving the land in a reasonably similar state as its preconstruction condition, or even improved by being left to fallow over the life of the project. Lastly, a Full Environmental Assessment Form was completed for the Project, and no areas of significant environmental concern were identified.

Thus, granting the area variances would not adversely impact the physical or environmental conditions in the neighborhood.

**e. The alleged difficulty was not self-created.**

The proposed location of the Project is dictated by various factors beyond the Applicant’s control as there are significant logistical constraints in siting a solar project (as discussed fully above, in Section I). Most properties in a municipality are not adequate for solar facilities. A parcel must be large enough and have a suitable layout to accommodate a solar project, as such projects are only economically feasible at a certain size. To be eligible, a proposed site cannot have excessive wetlands, tree cover, steep slopes, etc., and must have sufficient solar access as is, without needing substantial, oftentimes prohibitive, modification. The property must also be located near specific transmission lines and a substation with sufficient available capacity to interconnect the project to the utility grid. Lastly, these projects require landowners who are willing to enter into leases for 30-35 years or more, allowing the projects to act as a tenant on their property. Without these crucial features, a solar project could not be built.

Here, the Property is one of those parcels well-suited for solar development. This parcel provides access to the POI, which has capacity. The Property is largely wooded, flat land with a significant forested buffer around the entire Project area. There are only small areas of steep slopes and wetlands on the Property, which will be avoided or mitigated to the greatest extent possible. Additionally, the Project will not add significant traffic, noise, odors, or pollution to the neighborhood, and unlike a more permanent development, the Project will protect the existing natural elements and character of the area once operational.

Lastly, strict application of the Town Code here will not serve a valid public purpose because it does not outweigh the injury to the Applicant—namely, that without the area variances, the Project is not financially viable. No valid public purpose would be served by the denial of the area variances. And regardless, even if the ZBA found this hardship to be self-created, given the overwhelming weight of the first four factors in favor of the Applicant, such a finding would not preclude the ZBA from granting the area variances.

Finally, the ZBA, “shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.” Town Law § 267-b(3)(c). As noted above, due to the constraints of siting a solar energy facility such as this one, the area variances are the minimum necessary to install the proposed Project.

**III. Conclusion**

Given the facts presented above, the Applicant respectfully requests that the ZBA find the Project to be a public utility use and grant the area variances allowing the Project to deviate from the specific setback and buffer requirements discussed above, as it meets the variance standard for public utilities under New York law. In the alternative, should the ZBA apply the five-factor area variance test under Town Law, we respectfully submit that the benefits to the Applicant



and the Town greatly outweigh any potential impacts to the immediately surrounding neighborhood and properties. As such, an evaluation of the five factors demonstrates that the requested area variances should be granted.

We thank you for your consideration of this letter and request. If you have any questions or concerns, please do not hesitate to contact me at (585) 613-3943 or [astoklosa@hodgsonruss.com](mailto:astoklosa@hodgsonruss.com).

Respectfully submitted,



Alicia R. Stoklosa

AST  
Enclosure

cc: Michelle Marrone, Town of Blooming Grove ZBA Clerk  
David MacCartney, Esq., Counsel to Town of Blooming Grove ZBA  
Matthew Mihaly, Project Manager, Delaware River Solar (*via email*)

# Exhibit A

Section 3, Item d.

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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DELAWARE RIVER SOLAR, LLC, NY AURORA I, LLC, NY  
AURORA II, LLC,

Petitioners,

For Judgment Pursuant to Article 78 of the CPLR and for a  
Declaratory Judgment Pursuant to CPLR 3001

Index No.: 808123/2022  
Hon. Craig D. Hannah

-against-

TOWN OF AURORA ZONING BOARD OF APPEALS,

Respondent.

---

**ORDER AND JUDGMENT**

**WHEREAS**, Petitioners DELAWARE RIVER SOLAR, LLC, NY AURORA I, LLC, NY AURORA II, LLC (together, "Petitioners"), commenced this combined Declaratory Judgment action and CPLR Article 78 proceeding by filing a Notice of Petition and Verified Petition, with exhibits, on July 18, 2022, seeking an order and judgment annulling the determination of the Town of Aurora Zoning Board of Appeals ("Respondent"), declaring Petitioners to be a public utility for purposes of reviewing their use variance application, ordering Respondent to issue the use variance for Petitioners' proposed project pursuant to the public utility use variance standard, and awarding Petitioners attorneys' fees under Section 107 of the Public Officers Law; and

**WHEREAS**, upon reading and considering (1) Petitioners' Notice of Petition, dated July 18, 2022 [Doc. 5]; (2) Petitioners' Verified Petition, with exhibits, dated July 18, 2022 [Docs. 1-5]; (3) Petitioners' Memorandum of Law in Support of the Verified Petition, dated

August 24, 2022 [Doc. 11]; (4) the Affirmation of Charles W. Malcomb, Esq. in Support of the Verified Petition, with exhibits, dated August 24, 2022 [Docs. 12,13]; and (5) the Affidavit of Peter Dolgos in Support of the Petition, dated August 24, 2022 [Doc. 14]; and

**WHEREAS**, upon reading and considering (6) The Certified Transcript of Proceedings dated September 2, 2022 [Doc. 15]; (7) Respondent's Verified Answer with Objections in Point of Law, dated September 28, 2022 [Doc. 16]; and (8) Respondent's Memorandum of Law in Support of the Answer with Objections in Points of Law of Town of Aurora Zoning Board of Appeals, dated September 28, 2022 [Doc. 17]; and

**WHEREAS**, upon reading and considering (9) Petitioners' Memorandum of Law in Reply, dated October 5, 2022 [Doc. 18]; and

**WHEREAS**, the Court hearing oral argument on October 12, 2022, and appearances having been made by Hodgson Russ LLP (Charles W. Malcomb, Esq. and Alicia R. Legland, Esq.) on behalf of Petitioners and Lippes Mathias LLP (Jennifer C. Persico, Esq.) on behalf of Respondent; and

**WHEREAS**, the Court having issued rulings on October 12, 2022 on the above and the transcript of said ruling is annexed hereto as **Exhibit A**, and

**NOW**, upon all of the pleadings, affidavits, papers, and proceedings had herein, and deliberation having been had thereon, it is hereby:

**ORDERED, ADJUDGED, AND DECREED** that Petitioners' Verified Petition filed on July 18, 2022 is hereby granted in part, and denied in part; and it is further

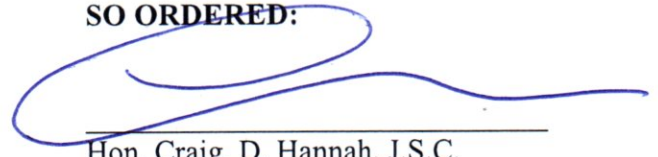
**ORDERED, ADJUDGED, AND DECREED** that the determination of the Town of Aurora Zoning Board of Appeals is hereby annulled; and it is further

**ORDERED, ADJUDGED, AND DECREED** that Petitioners' use variance application for the proposed solar energy facility is hereby remanded to Respondent for consideration pursuant to the public utility use variance standard as articulated in *Consolidated Edison v. Hoffman*, 43 N.Y.2d 598 (1978); and it is further

**ORDERED, ADJUDGED, AND DECREED** that Petitioners' request for attorneys' fees pursuant to Section 107 of the Public Officers Law is hereby denied.

**SO ORDERED:**

*Dated: November 7, 2022*



Hon. Craig. D. Hannah, J.S.C.

**GRANTED:**

**FILED: ERIE COUNTY CLERK 11/14/2022 12:07 PM**  
**FILED: ERIE COUNTY CLERK 10/21/2022 01:30 PM**

NYSCEF DOC. NO. 20

INDEX NO. 808123/2022  
INDEX NO. 808123/2022  
RECEIVED NYSCEF 11/14/2022  
RECEIVED NYSC Section 3, Item d.

# EXHIBIT A

1 STATE OF NEW YORK : SUPREME COURT  
2 COUNTY OF ERIE : PART 31

3 DELAWARE RIVER SOLAR, LLC,  
4 NY AURORA I, LLC,  
5 NY AURORA II, LLC,

6 Petitioners,

7 -vs- Index No. 808123/2022

8 TOWN OF AURORA ZONING BOARD OF APPEALS,

9 Respondent.

10 Buffalo City Court Building  
11 50 Delaware Avenue  
12 October 12, 2022

13 B e f o r e:

14 HONORABLE CRAIG D. HANNAH  
15 SUPREME COURT JUSTICE

16 A p p e a r a n c e s:

17 CHARLES W. MALCOMB, II, ESQ.,  
18 Appearing for the Petitioners via Teams

19 JENNIFER PERSICO, ESQ.,  
20 Appearing for the Respondent via Teams

21  
22  
23  
24  
25



1 THE COURT: Okay. Thank you both. I  
2 appreciate both of your arguments and I think you both  
3 made some very interesting and very concise points. I'm  
4 going to follow the ruling from Consolidated Edison  
5 versus Hoffman. I do agree with Miss Persico it is not  
6 our job to supplant the Zoning Board of Appeals. Our job  
7 is to make sure that the right standard was followed.  
8 So, I'm going to grant the Petitioners' application in  
9 part. I'm going to annul and set aside the initial  
10 ruling and send it back to the Town of Aurora to consider  
11 the public use standard variance. I'm not going to grant  
12 attorneys fees, so that part of the application will be  
13 denied. And that's the ruling of the Court. Could one  
14 of you prepare an order and circulate it and submit it to  
15 me.

16 MR. MALCOMB: I can take care of that, Your  
17 Honor. I'll submit a proposed order to respondent's  
18 counsel before I submit it to the Court.

19 THE COURT: My clerk would like for it to be  
20 exchanged and submitted to the Court within ten days.  
21 All right. Thank you both.

22 MS. PERSICO: Thank you.

23 MR. MALCOMB: Thank you, Your Honor.

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C E R T I F I C A T I O N

The above is certified to be a true and correct transcript of the testimony.

*Kim M. Haettich*  
KIM M. HAETTICH  
Official Court Reporter

**STATE OF NEW YORK  
SUPREME COURT : COUNTY OF OSWEGO**

**CIPRIANI ENERGY GROUP CORP.,**

**Petitioners**

**JUDGMENT**

**For Judgment Pursuant to Article 78 of the  
CPLR and for a Declaratory Judgment,  
Pursuant to the CPLR**

**Index No.: EFC-2022-0043**

**v.**

**ZONING BOARD OF APPEALS OF THE  
TOWN OF MINETTO, NEW YORK, ROB  
RAMSEY in his official capacity as Code  
Enforcement Officer of the Town of Minetto,  
New York and TOWN OF MINETTO,  
NEW YORK,**

**HON. GREGORY R. GILBERT JSC**

**Respondents.**

**Appearances:** Daniel A. Spitzer, Esq.  
Hodgson Russ LLP  
Attorneys for Petitioners  
140 Pearl Street, Ste. 100  
Buffalo, New York 14202-4040

Christopher J. Baiamonte, Esq.  
The Wladis Law Firm, PC  
Attorneys for Respondents  
PO Box 245  
Syracuse, New York 13214

**BACKGROUND**

This Article 78 Petition seeks to annul findings by the Town of Minetto Zoning Board of Appeals: directing the Town Code Enforcement Officer to stop requiring a use variance; and declaring that petitioner is a public utility. The issues pertain to plans by Cipriani Energy Group Corp. ("Cipriani") to build a solar energy project on lands to which it is holder of a purchase option agreement located in the Town. The Town Code Enforcement Officer ("CEO") determined that a variance was required and the application for the same was denied by the Town Zoning Board of Appeals ("ZBA"). Cipriani alleges that this contravenes the Town's Local Law No. 3 of 2020.

The land in question is zoned R-10 and R-20. As set forth by the petition, the project is for the construction and operation of a 4.5 megawatt solar energy facility classified as a large solar energy system under Section 107 of the Zoning Code. Cipriani submitted a site plan application on March 9, 2021 and a Unified Solar Permit on April 6, 2021. In response, the CEO determined that a use variance would be required. Cipriani filed an appeal to the ZBA under Zoning Code 302(1) requesting an interpretation in the matter on May 25, 2021. The matter was tabled for further review by the ZBA at a meeting on July 22, 2021 and eventually decided on December 14,

2021 with the ZBA making determination that Cipriani would be required to seek a variance for the project. The ZBA made no determination as to the status of Cipriani as a public utility.

The matter was argued before the Court via Microsoft Teams on March 17, 2022 with counsel as indicated above appearing for the parties.

### DISCUSSION

The question presented is whether the determination by the ZBA was made in violation of lawful procedure, affected by error of law, arbitrary or capricious or an abuse of discretion. Jackson v. New York State Urban Development Corp., 67 NY2d 400 (1986); Matter of May v. Town of Lafayette Zoning Board of Appeals, 43 AD3d 1427 (4<sup>th</sup> Dept 2007). The essence of the dispute is the finding that Section 606 of the Zoning Ordinance of the Town of Minetto (“Code”) applies to the exclusion of Article 4 of the Code to prohibit the special permit sought by Cipriani. The petition claims that the Code does not state such an exclusion and that the ZBA failed to distinguish the use sought by Cipriani as a public utility or to even determine if Cipriani was a public utility.

The Court starts with the claim that Cipriani is a public utility. The case, Cellular Telephone Company v. Rosenberg, 82 NY2d 364 (1993), directly applies to this situation and compels the determination as a matter of law that Cipriani is a public utility. Matter of W. Beekmantown Neighborhood Association, Inc. v. Zoning Board of Appeals of the Town of Beekmantown, 53 AD3d 954 (3<sup>rd</sup> Dept 2008); Matter of Wind Power Ethics Group (WPRG) v. Zoning Board of Appeals of the Town of Cape Vincent, 60 AD3d 1282 (4<sup>th</sup> Dept 2009). As in Beekmantown and WPRG, public utility is not specifically defined by the Code.

Generally, the decision by the ZBA is regarded as presumptively correct absent illegality, a finding that it is arbitrary and capricious or erroneous as a matter of law or that it is unsupported by substantial evidence. Corter v. Zoning Board of Appeals for the Village of Fredonia, 46 AD2d 184 (4<sup>th</sup> Dept 1974); Matter of Carnelian Farms, LLC v. Leventhal, 151 AD3d 844 (2<sup>nd</sup> Dept 2017). In this matter what is presented is the interpretation of the Code and specifically that interpretation given to Section 606 by the ZBA. While the ZBA interpretation of the Code is entitled to deference, the Court bears the ultimate responsibility for interpreting the law. Matter of Devogelaere v. Webster Zoning Board of Appeals, 87 AD3d 1407 (4<sup>th</sup> Dept 2011) motion for leave to appeal denied 18 NY3d 808; Matter of Ogden Land Development, LLC v. Zoning Board of Appeals of the Village of Scarsdale, 121 AD3d 695 (2<sup>nd</sup> Dept 2014).

The Code must be construed according to the words used being given their ordinary meaning. Baker v. Town of Islip Zoning Board of Appeals, 20 AD3d 522 (2<sup>nd</sup> Dept 2005) motion for leave to appeal denied 6 NY3d 701; Matter of Falco realty, Inc. v. Town of Poughkeepsie Zoning Board of Appeals, 40 AD3d 635 (2<sup>nd</sup> Dept 2007) motion for leave to appeal denied 9 NY3d 807. It is well settled that a zoning code must be strictly construed against the municipality and in favor the property owner. Matter of Mamaroneck Beach & Yacht Club, Inc. v. Zoning Board of Appeals of the Village of Mamaroneck, 53 AD3d 494 (2<sup>nd</sup> Dept 2008); Matter of Falco realty, Inc. v. Town of Poughkeepsie Zoning Board of Appeals, 40 AD3d 635 (2<sup>nd</sup> Dept 2007) motion for leave to appeal denied 9 NY3d 807.

As a public utility, Cipriani is entitled to the application of Article 4 of the Code. The finding by the ZBA directly contravenes the express provisions of Article 4 of the Code that allow for the use sought by Cipriani and renders Article 4 of the Code meaningless for the public utility use. The use is authorized under the Code for a public utility in either the R-10 or R-20 districts pursuant to Code Sections 431 and 441 after issuance of a special permit. If it were the case that Section 606 was intended to modify either Section 431 or 441 specifically as to solar public utility energy projects, then it should have specified that to be the case. Instead, Section 606 is silent as to solar energy projects as a public utility. It was error to read such a restriction into Section 606.

Further, Section 606 as interpreted by the ZBA would nullify other provisions of Article 6 as follows:

Section 601 Purpose

The purpose of this section is to facilitate the development and operation of renewable energy systems based on sunlight. Solar energy systems are appropriate in all zoning districts when measures are taken, as provided in this section, to minimize adverse impacts on neighboring properties and protect the public health, safety and welfare.

Section 602 Applicability

2. Solar energy systems are permitted in all zones in the Town, subject to the requirements described below.

Section 605 Large Scale Solar Energy Systems

1. A Large Solar energy System is defined as a solar photovoltaic system with a rated capacity larger than 200kW, the principal purpose of which is to provide electrical power for sale to the general power grid or to be sold to other power customers, or to be consumed on site.
2. Pursuant to the Site Plan Review process, the project proponent shall provide the following documents to the Planning Board and/or Zoning Board:
  - a. Survey map done by a licensed surveyor;
  - b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
  - c. Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
  - d. Documentation of the major system components to be used, including the panels, mounting system, and inverter;
  - e. Name, address and contact information for system installer;

- f. Name, address and phone number of the project proponent, as well as all other property owners, if any;
  - g. Zoning district designation for the parcel of land comprising the project site;
  - h. Proof the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer owned generator. Off grid systems are exempt from this requirement.
3. Large scale principal use energy systems are subject to setback requirements of the particular zoning district in which they are located.

Section 609 Non-Conformance

- 2. Ground mounted systems
  - b. If a ground mounted system is to be installed on a property that is non-conforming because it violates zoning district requirements other than setbacks, then a special use permit must be obtained for the proposed installation.

While Section 601 states the purpose of Article 6 is to facilitate solar energy systems in all zoning districts. Section 606 permits the use in all zoning districts except residential districts. The conflict is again apparent with Section 602 allowing solar energy systems in all zones in the Town. Section 605 applies to large scale solar energy systems but makes no limitation to the public utility use allowed for both R-20 and R-10 residential zones. Section 609(2)(b) allows for a special use permit when there is a violation of zoning district requirements whereas here the ZBA determined that a special use permit could not be allowed based on Section 606.

The ZBA determination based on Section 606 is also internally inconsistent stating:

- 1. The zoning law of the Town of Minetto must be read and interpreted in its entirety. Section 431 allows certain uses with a special permit in an R-20 zone. Section 609 also refers to the use of special permits in certain cases. However, Section 606 specifically excludes the inclusion of ground mounted solar systems in R-20 zones.

Section 606 states as follows:

Section 606 Permitted Zoning Districts

- 1. All building mounted and ground mounted systems are permitted in all zoning districts, except residential zones, as a primary use or accessory use to any lawfully permitted principal use on the same property upon issuance of the proper permits herein and upon compliance with all requirements of this zoning ordinance.

Section 606 makes no specific reference to R-20 zones just as it makes no reference to the public utility use. Reference to the R-10 zone also does not appear in Section 606 and was not addressed

by the ZBA while it was part of the application. [DKT# 1 par. 14]. The ZBA interpretation of Section 606 is unreasonable and irrational. The failure of the ZBA to address the issue of public utility or the R-10 use as requested also affects the ZBA determination with a failure of substantial evidence to support the denial. Van Wormer v. Planning Board, 158 AD2d 995 (4<sup>th</sup> Dept 1990).

In short, the public utility use proposed by Cipriani for a large solar energy system is specifically allowed by Sections 431 and 441 of the Code and is subject to the requirements of Article 6 of the Code including but not limited to Section 603(1); 605 and 607(5). Cipriani is required to apply for a special use permit. The Town does not have the right under the Code to issue a blanket denial of a special use permit based on Section 606.

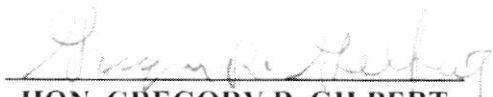
Accordingly, it is

**ORDERED, ADJUDGED AND DECREED** that the petition of **CIPRIANI ENERGY GROUP CORP.** is hereby **GRANTED** to the extent indicated herein; and it is

**ORDERED, ADJUDGED AND DECREED** that the determination of the Zoning Board of Appeals is **RESCINDED**, and the Respondents are hereby directed to proceed with a review of such building permit and special use permit requirements as have been and may be submitted by **CIPRIANI ENERGY GROUP CORP.** in accordance herewith.

**ENTER**

**Dated: April 12, 2022**  
**Oswego, New York**

  
**HON. GREGORY R. GILBERT**  
**SUPREME COURT JUSTICE**



At an IAS Term of the Greene County Supreme Court, held in and for the County of Greene, in the Village of Catskill, New York, on the 18th day of August, 2022.

PRESENT: HON. ADAM W. SILVERMAN,  
Acting Justice of the Supreme Court

STATE OF NEW YORK  
SUPREME COURT COUNTY OF GREENE

\_\_\_\_\_  
In the Matter of the Application of

FREEPOINT SOLAR LLC, and FPS POTIC  
SOLAR LLC,

Petitioners,

*For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules*

DECISION AND ORDER  
INDEX NO. EF2021-795

-against-

TOWN OF ATHENS ZONING BOARD OF  
APPEALS,

Respondent.

\_\_\_\_\_  
APPEARANCES:

THE MURRAY LAW FIRM PLLC  
Jacqueline Phillips Murray, Esq.  
10 Maxwell Dr Ste 100,  
Clifton Park, NY 12065  
**Attorney for Petitioners**

DREYER BOYAJIAN, LLP  
John Dowd, Esq.  
75 Columbia St.  
Albany, NY 12210  
**Attorney for the Respondent**

The following e-filed documents, listed by NYSCEF document number 1, 2, 15-35, 39-43, 46-53, 55, 56, 57 were read on the Petition and Answer.

ADAM W. SILVERMAN, A.J.S.C.

This special proceeding pursuant to CPLR article 78 was commenced on October 6, 2021, when Petitioners filed the Petition challenging Respondent's denial of a use variance. Petitioners, Freepoint Solar LLC, a nationwide developer of renewable energy infrastructure, and FPS Potic Solar LLC, a subsidiary of Freepoint Solar LLC, secured options to purchase two parcels of real property located at Potic Mountain Road in the Town of Athens, Greene County, intending to locate a solar energy facility on a portion thereof. Petitioners faced repeated delays from the Town government as they sought a building permit or standing to apply for a use variance. When their application to Respondent was finally heard, Respondent determined not to apply the public utility variance standard ("public necessity" test) to the application, but rather the general standard set under Town Law § 267-b (2) (b) (*see generally Matter of Otto v Steinhilber*, 282 NY 71 [1939]). Because Respondent erred by applying the wrong standard to the application, the determination is hereby vacated, and the matter remanded to Respondent for a new determination based upon application of the correct standard.

## I. BACKGROUND

On July 18, 2018, Petitioners contacted the Town regarding the building permit application and to request a pre-application meeting with Respondent [NYSCEF Doc No 1 ¶ 19]. Although an application with details of the Project had yet to be filed, the Town Attorney advised, by e-mail dated July 25, 2018, Petitioners' project "would not seem to fit the circumstances of wanting a large scale development in an RU zone" [NYSCEF Doc No 1 ¶ 20]. Petitioners thereafter attended the Town Board's September 17, 2018 meeting to informally present on the project and, based upon feedback from that meeting, Petitioners met with adjoining landowners regarding the

proposal leading to letters of support from nine of fourteen adjoining landowners and two additional adjoining landowners also offering their adjacent properties to be used for the project. [NYSCEF Doc No 1 ¶ 21-24].

On December 6, 2019, Petitioners contacted the Town Attorney to confirm the Town's application procedures and were informed they must file an application for a building permit from the Town Code Enforcement Officer ("CEO") and be denied before they would have standing to appeal the denial and could file a Use Variance Application with Respondent [NYSCEF Doc No 1 ¶ 25-27]. On January 7, 2020, Petitioners sent their Building Permit Application, together with two copies of the preliminary site plan [NYSCEF Doc No 1 ¶ 28].

The CEO requested the "cost of construction" to calculate the fee, and, on January 10, 2020, the Town Attorney replied that Petitioners would "need to use a proposed value for the Project" so that the building permit fee could be calculated [NYSCEF Doc No 1 ¶ 29-30]. On January 15, 2020, Petitioners sought clarification regarding the need for cost of construction as the Town's fee schedule did not set forth a building permit application fee based on the "costs of construction" or the "value for the Project," but was rather, based on a "per square foot" calculation [NYSCEF Doc No 1 ¶ 31]. On January 16, 2020, the Town Attorney directed Petitioners to contact the CEO directly, however the CEO failed to respond until February 7, 2020, when he advised that the building permit application was "incomplete without an estimate of the cost of construction so we can calculate the permit fee," and requested copies of Petitioners' option agreements [NYSCEF Doc No 1 ¶ 31-33]. On February 12, 2020, the CEO advised Petitioners that the denial would be issued upon receipt of the option agreements [NYSCEF Doc No 1 ¶ 34]. On February 26, 2020,

Petitioners provided the “cost of construction” and option agreements while offering to pay the fee once it was calculated by the CEO [NYSCEF Doc No 1 ¶ 35].

Expecting the denial to be forthcoming, on February 28, 2020, Petitioners’ expressed their intention to attend Respondent’s March 11, 2020 meeting, however the Town Attorney stated a denial would not be provided until the application was “completed and the building permit fee is paid,” despite the Town having not provided a fee amount or noted any additional alleged omissions and advised that Petitioners would not be afforded an opportunity to be heard at the meeting [NYSCEF Doc No 1 ¶ 35-38]

On March 2, 2020, the CEO discussed Petitioners’ application with the Town Board, and on March 3, 2020, the Town Attorney advised Petitioners that the application would not be decided until the fee was paid, despite no fee amount being set, and that the Town Board directed the Town Attorney to have no further discussions or correspondence with Petitioners regarding the matter [NYSCEF Doc No 1 ¶ 39]. Thereafter, on March 6, 2022, since no calculation was provided, Petitioners did their own calculation and submitted it with a check to the Town [NYSCEF Doc No 1 ¶ 40-42]. In response, on March 19, 2020, the CEO requested data related to the project’s lot coverage and connection to the power grid despite Petitioners having already provided lot coverage information with its application [NYSCEF Doc No 1 ¶ 43-45].

On April 15, 2020, the CEO requested, despite none of these items being on the building permit application, the quantity and square feet of the proposed solar panels, the total square feet of land for the project, and whether a Stormwater Pollution Prevention Plan (“SWPPP”) and State Pollutant Discharge Elimination System (“SPDES”) General Permit would be filed with the New York State Department of Environmental Conservation (“NYSDEC”) and any other

environmental requirements [NYSCEF Doc No 1 ¶ 46-49]. On April 16, 2020, Petitioners replied that the solar panel square footage was already provided to the CEO on March 13 and 19, 2020, and added the solar panel quantity and dimensions, and confirmed that a SWPPP, SPDES General Permit and a Full Environmental Assessment Form would be required for the project and would be submitted with Petitioners' applications upon the CEO denying the building permit application [NYSCEF Doc No 1 ¶ 49]. On April 17, 2020, the CEO requested the NYSDEC SWPPP and SPDES General Permit [NYSCEF Doc No 1 ¶ 50]. On May 8, 2020 the CEO requested Petitioners secure all New York State approvals for the project [NYSCEF Doc No 1 ¶ 54].

On May 4, 2020, Petitioners attempted to speak at the Town Board meeting but were muted and told they must request to be on the agenda through the Town Clerk [NYSCEF Doc No 1 ¶ 52]. On May 12, 2020, after rejecting Petitioners' request to be added to the agenda, the Town Supervisor stated that there was "no reason to schedule a meeting with the Town Board/Town Attorney/Planning or Zoning Boards" because Petitioners' application remained "incomplete" until the Town received: (1) "full set of engineered plans"; (2) "estimated project cost"; and (3) "correct application fee" [NYSCEF Doc No 1 ¶ 52-58].

On May 15, 2020, the CEO made an additional request for Workers' Compensation and liability insurance certificates [NYSCEF Doc No 1 ¶ 60].

On June 15 and July 1, 2020, Petitioners provided the Town with a full set of plans, all New York State approvals for the project, and Workers' Compensation and liability insurance certificates, however, despite outreach by Petitioners over the next two months, the CEO failed to provide a fee amount [NYSCEF Doc No 1 ¶ 61-62].

On September 9, 2020, the Town Attorney requested that Petitioners re-submit all previously provided information and Petitioners did so the same day [NYSCEF Doc No 1 ¶ 63]. On October 20, 2020, the Town Board adopted a fee of \$1,000 per megawatt and on December 11, 2020, Petitioners delivered the fee [NYSCEF Doc No 1 ¶ 64-65]. On January 20, 2021, over a year after the initial application, the CEO finally denied the application because the project was in a zoning district not permitted by Town's Solar Law, as was evident since the time the application was submitted [NYSCEF Doc No 1 ¶ 66-67]

On February 9, 2021, Petitioners filed their Use Variance Application with Respondent [NYSCEF Doc No 1 ¶ 68-70]. Petitioners then attended Respondent's March 17, 2021 meeting, observing their applications unopened, and were informed by Respondent's Chairman that "there was nothing he could do" because the project was in a zoning district where it was not a permitted use [NYSCEF Doc No 1 ¶ 71-78]. Petitioners next presented at Respondents' May 12, 2021 meeting, urging consideration of the Use Variance under the public utility standard [NYSCEF Doc No 1 ¶ 80-89]. After Respondent requested the option agreements, despite their previous submittal, and failed to attend a joint visual field study at the site organized by Petitioners with the Planning Board and Respondent, Petitioners next presented the Project at the ZBA's August 11, 2021 meeting [NYSCEF Doc No 1 ¶ 96, 106, 108, 111-119]. On September 8, 2021, Respondent issued a written decision unanimously denying Petitioners' Use Variance Application [NYSCEF Doc No 1 ¶ 124-129]. Significantly, the determination was based upon the standard set forth in Town Law § 267-b (2) (b) and provided no consideration under the public utility test set forth in *Matter of Consolidated Edison Co. v Hoffman* [NYSCEF Doc No 29].

## II. Standard Applicable to a Public Utility Use Variance Application

Generally, an applicant for a use variance must show that the zoning regulations and restrictions have caused “unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created” (Town Law § 267-b [2] [b]; *see generally Matter of Otto v Steinhilber*, 282 NY 71 [1939]).

“It has been observed . . . that [the unnecessary hardship] requirements are not appropriate where a public utility . . . seeks a variance, since the land may be usable for a purpose consistent with the zoning law, the uniqueness may be the result merely of the peculiar needs of the utility, and some impact on the neighborhood is likely” (*Matter of Consolidated Edison Co. of N.Y. v Hoffman*, 43 NY2d 598, 607 [1978]; *see* 2 Salkin, *New York Zoning Law and Practice* § 11:22 [4th ed. 2011]). “It has long been held that a zoning board may not exclude a utility from a community where the utility has shown a need for its facilities” (*Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d 364, 372 [1993] [internal quotation marks, brackets, and citations omitted]; *see* 12 NY Jur 2d, *Buildings, Zoning, and Land Controls* § 290; 2 Salkin, *New York Zoning Law and Practice* § 11:19 [4th ed. 2011]). Likewise, local boards may not deny an application based “solely on community objection” (*Matter of Biggs v Eden Renewables LLC*, 188 AD3d 1544, 1548



[3d Dept 2020] [Generalized community objections to the large scale solar project “due to potential concerns of negative visual impact and negative impact upon adjoining property values” held insufficient to overcome evidence in the record justifying granting of application]; *see also Cellular Tel. Co. v Village of Tarrytown*, 209 AD2d 57, 66 [2d Dept 1995] [In considering a public utility’s application for a variance, “a municipality may not invoke its police powers solely as a pretext to assuage strident community opposition”], *lv denied* 86 NY2d 701 [1995]). “In short, due to the essential nature of the service and the limited flexibility there is as to where the facility can be located in order to generate or provide the service, the facility must be, and is, entitled to a relaxed zoning standard” (Patricia E. Salkin and Robert Burgdorf, *Siting Wind Farms in New York: Applicability of the Relaxed Public Utility Standard*, New York Zoning Law and Practice Report vol. 7, No. 1.; *see* 3 Rathkopf’s *The Law of Zoning and Planning* § 48:6; 78:2 [4th ed.]).

“Although a municipality is not free to prevent a utility from providing necessary services by application of its zoning powers, neither may a utility simply disregard the local ordinances. Rather, a balance must be maintained between those interests of the locality which can be expressed by zoning ordinances and the needs of the community which must be served by the utility” (*Matter of Zagoreos v Conklin*, 109 AD2d 281, 289 [2d Dept 1985]; *see Matter of United States Transmission Sys. v Schoepflin*, 63 AD2d 970, 971 [2d Dept 1978]; *see also* 2 Salkin, *New York Zoning Law and Practice* § 11:27 [4th ed. 2011] [Expanding upon efforts to regulate solar energy facility siting to balance the need for energy with the potential negative externality such as loss of habit and open space]; *see generally* Sarah Pizzo, Note, *When Saving the Environment Hurts the Environment: Balancing Solar Energy Development with Land and Wildlife Conservation in A Warming Climate*, 22 *Colo J Intl Envntl L & Poly* 123 [2011]). “Instead [of the

unnecessary hardship test], the utility must show that modification is a public necessity in that it is required to render safe and adequate service, and that there are compelling reasons, economic or otherwise, which make it more feasible [to seek the variance] than to use alternative [sites]” (*Matter of Consolidated Edison Co. of N.Y. v Hoffman*, 43 NY2d at 611; see *Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 372 [Holding “*Matter of Consolidated Edison (supra)*, applies to all public utilities. It also applies to entirely new sitings of facilities, as well as the modification of existing facilities”). The Court of Appeals has further held that ““where the intrusion or burden on the community is minimal, the showing required by the utility should be correspondingly reduced”” (*Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 372, quoting *Matter of Consolidated Edison Co. of N.Y. v Hoffman*, 43 NY2d at 611; see *Sprint Spectrum, L.P. v Zoning Bd. of Appeals of the Town of Guilderland*, 173 Misc 2d 874, 877 [Sup Ct, Albany County 1997, Graffeo, J.] [Holding “to obtain a use variance, the petitioner must demonstrate that the site is necessary to provide safe and adequate service and that there are compelling reasons, economic or otherwise, to obtain the variance. Moreover, where the burden on the community is minimal, the showing required by the utility should be correspondingly reduced”]).

In determining what applicants are subject to the public utility standard, courts do not apply a rigid rule (see *Matter of Nextel Partners v Town of Fort Ann*, 1 AD3d 89, 93 [3d Dept 2003] [Holding a “case-by-case” analysis of changes in industries and regulations may impact the viability of the rationale underlying the public utility exception, but deregulation and competition alone do not prevent an applicant from being a public utility], *lv denied* 1 NY3d 507 [2004]) “A ‘public utility’ has been defined to mean ‘a private business, often a monopoly, which provides services so essential to the public interest as to enjoy certain privileges such as eminent domain

and be subject to such governmental regulation as fixing of rates, and standards of service” (*Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 371, quoting 2 Anderson, *American Law of Zoning* § 12.32, at 568-569 [3d ed]). “Characteristics of the public utility include (1) the essential nature of the services offered which must be taken into account when regulations seek to limit expansion of facilities which provide the services, (2) ‘operat[ion] under a franchise, subject to some measure of public regulation,’ and (3) logistic problems, such as the fact that ‘[t]he product of the utility must be piped, wired, or otherwise served to each user . . . [,] the supply must be maintained at a constant level to meet minute-by-minute need[, and] [t]he user has no alternative source [and] the supplier commonly has no alternative means of delivery’” (*id.*). “There is usually no question that the activities of heavily regulated electric and gas companies and their energy generation and transmission projects and facilities involve the activities of public utilities” (4 Rathkopf’s *The Law of Zoning and Planning* § 78:9 [4th ed.], citing *Matter of West Beekmantown Neighborhood Assn., Inc. v Zoning Bd. of Appeals of Town of Beekmantown*, 53 AD3d 954, 956 [3d Dept 2008] [Holding zoning board rationally found that wind turbines were “public utility”]; see *Matter of Wind Power Ethics Group (WPEG) v Zoning Bd. of Appeals of Town of Cape Vincent*, 60 AD3d 1282, 1283 [4th Dept 2009] [Holding zoning board’s classification of wind-powered generators as a utility was neither irrational nor unreasonable, and that the determination is supported by substantial evidence]).

### III. Discussion

Respondent asserts that Petitioners’ solar facility is not a public utility for zoning purposes. Respondent also argues that the Town of Athens zoning ordinance does not address public utilities

and its definition of “essential services”<sup>1</sup> is narrower than that interpreted to support wind turbines as public utilities (*compare Matter of Wind Power Ethics Group (WPEG) v Zoning Bd. of Appeals of Town of Cape Vincent*, 60 AD3d at 1283). Additionally, Respondent contends that Petitioners cannot be considered a utility because they do not meet the test under *Matter of Cellular Tel. Co. v Rosenberg* since they do “not hold a monopoly on the provision of a particular service”; do “not have the power of eminent domain; there is nothing unique about the essential nature of its services that requires mandatory placement in one specific area; while operators of such facilities are lightly regulated by the [Public Service Commission], the applicant does not operate under a franchise; and finally, solar generating facilities are not subject to the same logistical problems as true public utilities with respect to location and alternative sources and means of delivery.” Finally, Respondent maintains that even assuming the applicability of the public utility standard, it must be held as a “gap” test, that is it would only be applicable if an applicant could show a gap in service that needs to be filled (*citing* 2 Salkin, *New York Zoning Law and Practice* § 12:03 [4th ed. 2011]).

Contrary to Respondent’s assertion that “electricity is an essential service - is well settled” (Patricia E. Salkin and Robert Burgdorf, *Siting Wind Farms in New York: Applicability of the Relaxed Public Utility Standard*, *New York Zoning Law and Practice Report* vol. 7, No. 1.; *see generally Berg v Chelsea Hotel Owner, LLC*, 203 AD3d 484 [1st Dept 2022] [Listing, in a different context, “essential services” as “heat, hot water, gas, and electricity”]). “While ‘public utility’ is not defined by the zoning law at issue, it is undisputed that the [facility that Petitioners] intend[]

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<sup>1</sup> Code of the Town of Athens 180-3 provides “Essential Services: The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, traffic signals, hydrants, street signs and similar equipment and accessories in connection therewith, but not including buildings, unless specifically permitted by special permit, and reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare”.

to construct will generate energy, a useful public service, and will be subjected to regulation and supervision by the Public Service Commission” (*Matter of West Beekmantown Neighborhood Assn., Inc. v Zoning Bd. of Appeals of Town of Beekmantown*, 53 AD3d at 956; see Public Service Law § 2 [2-b] [Stating that the “term ‘alternate energy production facility,’ . . . includes any solar (facility) . . . together with any related facilities located at the same project site, with an electric generating capacity of up to eighty megawatts, which produces electricity, gas or useful thermal energy”]; see also Public Service Law § 2 [12], [23]; 5 [1] [b]; 66-c [1]). That the solar energy industry is not subject to an exclusive franchise does not prevent the application of the relaxed standard (see *Matter of Nextel Partners v Town of Fort Ann*, 1 AD3d at 93). Nor is the power of eminent domain the sole defining feature of a public utility (see *Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 371). While Respondent argues that Petitioners’ facility does not face the same logistical challenges as “true public utilities,” the record includes a Central Hudson Capacity Map showing distribution system locations throughout the area supporting Petitioners’ assertion that the location is subject to the logistic problems contemplated by *Matter of Cellular Tel. Co. v Rosenberg* (82 NY2d at 371) [NYSCEF Doc No 33].<sup>2</sup>

Finally, Respondent’s assertion that Petitioners must meet a “gap” test in a manner similar to a cellular provider (see *Matter of Independent Wireless One Corp. v City of Syracuse*, 12 AD3d 1085, 1086 {4th Dept 2004}) is unavailing. In *Matter of Consolidated Edison Co. v Hoffman*,

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<sup>2</sup> Beyond Respondent’s conclusory assertion that solar can be located anywhere and Petitioners’ evidence in the record regarding infrastructure limitations, property law generally has begun recognizing the variable rights, and impacts, associated with solar energy and real property (see e.g. Brent Resh, Note, *Something New Under the Sun: The Drecp and Utility-Scale Solar on the New Energy Frontier*, 18 Nev LJ 317, 333-335 [2017] [Discussing the limitations of economics and infrastructure in siting large scale solar creating theoretical “renewable parcels” or “solarsheds”]; Hannah Wiseman, *Expanding Regional Renewable Governance*, 35 Harv Envtl L Rev 477, 511-512 [2011] [Recognizing that a “large wind or solar farm is useless if not connected to a transmission line that carries the electricity generated to consumers]).

respondent in that case denied an application by Consolidated Edison Company for a variance for the construction of a wet cooling tower for its nuclear generating plant (43 NY2d at 611). The Court of Appeals did not look solely to a coverage gap relating only to the municipality making the determination, but instead considered the broader “potential hardship to Con Edison’s approximately three million customers, and millions of others affected” (*id.* at 609). In considering the necessity of the variance, the Court of Appeals noted that “operation of the plant saved Con Edison customers \$78,000,000 in fuel expense . . . [and if the variance were denied and the facility] closed down[,] additional fuel costs to make up the lack of generation by increasing production at its other plants, all of which burn imported oil, would translate to \$567,000 per day . . . approximately 7,300,000 barrels of oil or equivalently 306,600,000 gallons” in a year (*id.* at 608). Similarly, the test for an electrical public utility, such as in this case, is not that there is “no other public utility provider available that could provide access to the proposed utility service . . . [and that] the locality not already served by another service provider” as urged by Respondent [NYSCEF Doc 46, p 9], but public necessity must be viewed in a broader consideration of the general public’s need for the service.

#### IV. Conclusion

Because Respondent erred by applying the general standard set under Town Law § 267-b rather than the test for a use variance set forth in *Matter of Consolidated Edison Co. v Hoffman*, the determination is hereby vacated, and the matter is remitted for Respondent to reconsider Petitioners' application with the appropriate test in mind (*see generally Matter of Nye v Zoning Bd. of Appeals of Town of Grand Is.*, 81 AD3d 1455, 1456 [4th Dept 2011]; *Millpond Mgt., Inc. v Town of Ulster Zoning Bd. of Appeals*, 42 AD3d 804, 806 [3d Dept 2007]).

Finally, in light of the foregoing, while the record reflects that an executive session was held that may have constituted a technical violation of the Open Meetings Law (Public Officers Law art 7), the Court finds this insufficient to warrant the award of attorney fees (*see Matter of Nextel Partners v Town of Fort Ann*, 1 AD3d at 96).

Accordingly, it is

**ORDERED**, that the petition is hereby **partially granted** to the extent that Respondent's determination is annulled and the matter is remitted to Respondent for further proceedings not inconsistent with this Court's decision; and it is further

**ORDERED**, the petition is **partially denied and dismissed**.

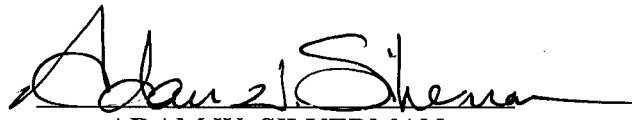
The Court has uploaded the original Decision/Order to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the County Clerk.

Counsel for Petitioners is not relieved from the applicable provisions of CPLR 2220 and 202.5b (h) (2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action/proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

**SO ORDERED AND ADJUDGED**

**ENTER.**

Dated: August 18, 2022  
Catskill, New York

  
ADAM W. SILVERMAN  
Acting Justice of the Supreme Court

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TOWN OF BINGHAMTON  
ZONING BOARD OF APPEALS

JUN 15 2022

TOWN OF BINGHAMTON  
VICKIE A. CONKLIN  
TOWN CLERK

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In the Matter  
Of the  
Application by  
ATLAS RENEWABLES LLC  
for a public utility use variance  
affecting property known as  
57 Powers Road, Binghamton, New York  
Tax Map No.: 161.14-1-35.11

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**DECISION**

Atlas Renewables LLC/Binghamton Solar, LLC, with consent and authorization of the property owner, having filed an application for a public utility use variance with the Zoning Board of Appeals, with respect to the construction of a 5.00 Megawatt Community Solar Farm on the property located at 57 Powers Road, Binghamton, New York owned by Robert Haskell, and the Zoning Board of Appeals having caused due notice of a public hearing on the said application to be duly published, posted and served, and having conducted a public hearing on the application of Atlas Renewables LLC on November 8, 2021 which public hearing was kept open through the December 13, 2021 meeting; and regular zoning board meetings were held to discuss the application of Atlas Renewables LLC on; January 10, 2022; February 14, 2022, April 18, 2022 and May 9, 2022, and having heard all of the evidence presented relating to the public utility use variance required by law to be considered in granting or denying such a public utility use variance, the Zoning Board of Appeals hereby makes the following findings and decision. Present for said meetings were Members Gerardo Tagliaferri, Mark Bordeau, Theresa Taro, Tom Bensley, and alternate member Timothy Cooper. Zoning Board Member, Sara Reifler, recused herself at the meeting on November 8, 2021 and did not participate in any of the meetings or public hearing.



### FINDINGS OF FACT

1. That Robert D. Haskell is the owner-landlord of 57 Powers Road, Binghamton, New York, hereinafter referred to as the “Premises” and is hereby bound by this Decision.
2. That Atlas Renewables LLC is the general contractor and Applicant for the Premises.
3. That the Premises is located in a district zoned R-1 according to the Town of Binghamton Zoning Map.
4. That the Applicant seeks to construct a 5.00 Megawatt Community Solar Farm upon obtaining a public utility use variance given to certain public utility related projects across NYS, which if granted, would then require site plan approval through the Planning Board.

### DECISION

The Applicant filed a timely application for a public utility use variance and has standing as the Lessee of the Premises, together with the Owner-Landlord of the Premises. The provisions of the State Environment Quality Review Act apply to this project. Timely notice of the November 8, 2021 public hearing was duly published, posted and served. A public hearing was convened on November 8, 2021 at which time the Applicant and any other interested parties were given an opportunity to present evidence relevant to the application. The public hearing was continued on December 13, 2021 which notice was duly published, posted and served. The continuation of the public hearing was convened on December 13, 2021 at which time the applicant and any other interested parties were given an opportunity to present evidence relevant to the application. The public hearing was closed on December 13, 2021. The Zoning Board of Appeals meeting was continued on January 10, 2022 at a regularly scheduled Board meeting at which time the Applicant and the Board members discussed a list of potential issues related to

the application and SEQR part 1. The applicant was given further opportunity to present evidence relevant to the Application. The meeting was continued on February 14, 2022 at a regularly scheduled Board meeting which was convened on February 14, 2022 at which time the Applicant and the Board members discussed a list of potential issues related to the application and SEQR part 2. The Board meeting was continued on April 18, 2022 which notice was duly published, although not required, and, posted. The continuation of the Zoning Board of Appeals meeting was held on April 18, 2022 at which time the Applicant and the Board members continued the discussion related to SEQR part 2. The Board meeting was continued on May 9, 2022 which notice was duly published, posted and served. On May 9, 2022 the Applicant and the Board members continued discussion related to SEQR part 3, and any other interested parties were given an opportunity to present evidence relevant to the Application. The Applicant had previously presented evidence of the statutory factors required for the granting of a public utility use variance, and reviewed those factors again with the Board.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the public hearing in person and David Brennan (Atlas-Applicant Attorney) attended the public hearing via zoom on November 8, 2021. Residents Tami Zebrowski-Darrow, Michael Bensley, Bill Miller & Bill Miller Jr., Gary & Barbara Sanford, Carolyn Cavallaro, Ruth McCormick, Charrie Stymacks, Gary Taubar, Joan & Stephen Zahorian, Teresa Quain, Anthony Restin attended the public hearing in person and Lisa Young attended via zoom on November 8, 2022. The members of the public listened to the presentation by the Applicant and raised questions, comments and concerns. Generally speaking, the public did not voice opposition to the proposed project and some voiced support for green energy.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the meeting in person and David Brennan (Atlas-Applicant Attorney) attended via zoom on the December 13, 2021 continued hearing. Residents Gary Taubar, Tami Zebrowski-Darrow, Carolyn Cavallaro, Gary Sanford, Barbara Sanford, Ruth McCormick attended the continued public hearing in person on December 13, 2021.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the meeting in person and David Brennan (Atlas-Applicant Attorney) attended via zoom on January 10, 2022. Other than some elected officials, no members of the public directly participated.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the ZBA meeting in person and David Brennan (Atlas-Applicant Attorney) attended via zoom on February 14, 2022. Other than some elected officials, no members of the public directly participated.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), David Brennan (Atlas-Applicant Attorney), and Robert Haskell (Owner-Applicant) attended the ZBA meeting in person and on April 18, 2022. Other than some elected officials, no members of the public directly participated.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), David Brennan (Atlas-Applicant Attorney), attended the Board meeting in person on May 9, 2022. At no time did any members of the public present any opposition to the proposed project and no one presented any documentary evidence in opposition to the request for the said public utility use variance.

The Zoning Board of Appeals again reviewed part 1 and part 2 of SEQR for this proposed project. The Zoning Board of Appeals then voted 5-0 that there was no significant



environmental impact with respect to said proposed project that could not be mitigated by actions on the part of the Applicant and Landowner. Accordingly, the Zoning Board determined there was a negative declaration with respect to SEQRA provided certain mitigation efforts were implemented by the Applicant and Landowner.

Based on the list of issues developed by the Zoning Board of Appeals, it appears that all issues, concerns and questions initially raised by the public were satisfactorily answered. Over the course of the Board meetings after the public hearing was closed, the Board deliberated, and discussed the various factors and underlying facts, including applying said proof to the applicable legal factors that must be considered in determining an application for a public utility use variance. The Board determined that granting the public utility use variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.

The Zoning Board of Appeals considered the specific factors or criteria for a public utility use variance approval, including the following:

- 1) Will the project provide an essential service, namely a) energy required to render safe and adequate electrical service to the local electric grid and b) compelling reasons, economic or otherwise, for a need for such a variance,
- 2) Will the generation of electricity through the proposed solar energy facility be regulated by the Public Service Commission, or by or through any other public regulations,
- 3) Will the electricity to be generated go into the regulated electric grid system in New York State.
- 4) Is there a lack of any other alternative viable locations in the Town for such a project.

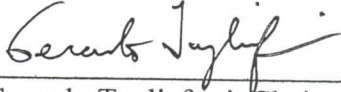
The Zoning Board of Appeals having duly considered the evidence and proof presented with respect to said factors in their deliberations prior to voting, and also in consideration of the fact that there was no public opposition made to the requested variance. As a result, the Board then took up a motion by member Mark Bordeau, seconded by member Timothy Cooper. The Board then voted to approve the public utility use variance by a vote of four ayes and one nay as follows: Chairman, Gerardo Tagliaferri, aye; Theresa Taro, aye; Mark Bordeau, aye; Tom Bensley, nay; and Timothy Cooper, aye.

Based on all of the evidence and proof presented, and for the reasons stated above, the application for said public utility use variance was granted with the following conditions:

- 1) The Applicant and any successor or assign shall maintain the buffer as shown on the revised plan drawing submitted to the Board.
- 2) If the buffer is disturbed in any manner during construction/development, the Applicant shall be responsible for all replacement plantings to establish and maintain the buffer.
- 3) Additional plantings and screening shall be placed in the areas where the Orchard Park area is visible from the project development boundary.
- 4) All plantings or new screening to make up the buffer or to supplement the buffer shall be deer resistant.
- 5) To extent permitted by law, the Town of Binghamton residents shall have priority for solar energy from this solar development.
- 6) Any decommissioning by the Applicant, or any successors and assigns, shall be performed in accordance with the Town's Solar Local Law and any applicable New York State law.

7) All conditions herein shall also be the responsibility of any successor or assign of the Applicant Atlas Renewables LLC/Binghamton Solar LLC.

Dated: June 14, 2022

  
\_\_\_\_\_  
Gerardo Tagliaferri, Chairman

At a Regular Monthly Meeting of the Zoning Board of Appeals held in and for the Town of Oswego on the 19<sup>th</sup> day of January, 2023, at 7:00 p.m. at the Town Hall located at 2320 County Route 7, Oswego, NY.

**STATE OF NEW YORK    COUNTY OF OSWEGO**  
**TOWN OF OSWEGO    ZONING BOARD OF APPEALS**

In the Matter of an Application by

Oswego PV, LLC

For A Use Variance to Operate a 3-MWAC solar farm  
at 447 County Route 20, Residential 3 (R3) District  
pursuant to the Zoning Law of the Town of Oswego, New York

**RESOLUTION**

**WHEREAS**, Oswego PV, LLC, a subsidiary of RIC Development, LLC (the “Applicant”) has applied for a use variance to operate a 3.0MWac solar farm (the “Project”) on property owned by Constance Simmons located at 447 County Route 7 (Tax Parcel No. 164.00-06-02.08) in the Town of Oswego’s Residential 3 (R3) Zoning District; and

**WHEREAS**, a use variance application was submitted by letter dated September 8, 2022, together with a comprehensive packet of materials that included, among other items, a site plan, evidence of site control, a visual impact assessment, Full Environmental Assessment Form (FEAF), Wetland study, Stormwater Pollution Prevention Plan (SWPPP), various state and federal agency determinations, a Coordinated Electric System Interconnect Review (CESAIR) from National Grid, and a Decommissioning Plan, (collectively the “Special Use Permit Application”); and

**WHEREAS**, all documentation contained in the Special Use Permit Application has been reviewed by the Zoning Board of Appeals (“ZBA”), in addition to the Use Variance application for consideration of a use variance as the result of the absence of a solar energy facility being specifically permitted within the Town of Oswego<sup>1</sup>; and

**WHEREAS**, the provisions of GML §239 l & m are triggered by the Project and therefore the use variance application together with the Special Use Permit Application packet were provided by the Town of Oswego Planning Board to the County of Oswego Planning Department for its recommendation; and

<sup>1</sup> The Town of Oswego Zoning Law does not reference any renewable energy facilities, having been adopted and revised prior to the influx of such facilities that are now commonplace in New York State; accordingly, a use variance is required before a special permit/site plan approval is considered.



**WHEREAS**, the County of Oswego reviewed the Project and in a letter dated October 10, 2022, recommended denial without prejudice, reasoning that the packet of materials submitted contained no evidence that the “applicable zoning regulations and restrictions have caused unnecessary hardship”<sup>2</sup> and declared that “the ZBA can submit evidence documenting the [sic] that the zoning regulations have created unnecessary hardship; and we will reconsider the application by the ZBA for a use variance, and planning board for site plan review and special permit[;]” and

**WHEREAS**, a joint public meeting of the Town’s ZBA and Planning Board was held on October 17, 2022, at which point several members of the public attended and provide various comments opposed to the proposed use variance and the Project in general; and

**WHEREAS**, the Applicant submitted additional supplemental materials to address many of the concerns of the residents and property owners near the proposed solar farm location, and further addressed the applicable use variance criteria the Courts of this State have applied to renewable energy projects (mostly wind and solar facilities), declaring such projects to be public utilities and thus reviewable under the less-restrictive *Hoffman*<sup>3</sup> standard of review, which was recently applied by the New York State Supreme Court in a legal proceeding involving the neighboring Town of Minetto<sup>4</sup>; and

**WHEREAS**, during a separate meeting, the Planning Board declared itself lead agency pursuant to SEQRA and began reviewing the FEAF submitted by the applicant, and the ZBA having also considered the environmental impacts of granting a use variance communicated its position on potential impacts on the environment and thereafter were notified that the Planning Board carefully considered such impacts and determined no significant impacts to the environment will occur as a result of the Project and the issued a Negative Declaration on January 16, 2023; and

**WHEREAS**, based on the *Hoffmann* use variance standard, as well as the completeness of the application, the ZBA hereby declares that it has sufficient information before it to make a determination on the application for use variance for the Project;

**NOW, THEREFORE**, upon motion made by board member Palm and seconded by board member Lorenz it is and shall hereby be

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<sup>2</sup> For reasons set out in this resolution and supplemental materials submitted by Applicant, the standard of review for a use variance for a public utility was incorrectly applied by the County of Oswego initially, but later correctly applied resulting in its letter recommendation dated November 18, 2022 to approve the Project.

<sup>3</sup> Consolidated Edison Co. of New York v. Hoffmann, 43 N.Y.2d 598 (1978), the NYS Court of Appeals holding that public utilities are subject to a more lenient standard when seeking a use variance. Public utilities can demonstrate entitlement to a variance by showing that the proposed “modification is a public necessity...required to render safe and adequate service...[and]...where the intrusion or burden on the community is minimal.” *Id.* at 610.

<sup>4</sup> See, Cipriani Energy Group Corp. v. Zoning Board of Appeals of the Town of Minetto, et al. (Index No. EFC-2022-0043), J. Gilbert, April 13, 2022.



**RESOLVED**, that the use variance application submitted by Oswego PV, LLC is approved as submitted for the following reasons:

1. The Project is a public utility and thus is afforded the standard of review for a use variance articulated in *Hoffmann*;
  - a. By its very nature, clean energy is a public necessity as proclaimed by the State of New York in its Clean Energy Standard and further codified in the Climate Leadership and Community Protection Act; and
  - b. based on the environmental review the impacts on the community are minimal; and it further

**RESOLVED**, that the use variance application submitted by Oswego PV, LLC is approved as submitted upon the following conditions:

1. Follow the conditions contained in any resolution by the Town of Oswego Planning Board approving the site plan and special permit<sup>5</sup>;
2. Follow all applicable federal, state, and local laws governing the construction and use of the property as a solar farm; and
3. Present the Town of Oswego with proof that a decommission bond or fund is established for the benefit of the Town and the property owner for the removal of the solar arrays and the return of the property to its pre-solar farm condition, and such bond or fund is periodically renewed to ensure the decommissioning costs are appropriate.

The motion having been placed before the Zoning Board of Appeals for a vote was adopted/defeated by a vote of 3 in favor, 2 opposed, and 0 abstained/recused in accordance with the following roll call vote:

DEBRA SHOENFELT-JASKULA, CHAIR	YES
ROBERT BAKER	YES
KENNETH KRAPP	NO
TRICIA LORENZ	NO
COLIN PALM	YES


---

<sup>5</sup> The ZBA strongly recommends that every consideration be given to utilizing access to the solar farm from County Route 7 through the Town of Oswego Highway Garage property to minimize or eliminate vehicle safety concerns should access to the property be gained solely from County Route 20. The Town Board is encouraged to grant the applicant the necessary easement to permit access through the town's property.

# CERTIFICATION

**I HEREBY CERTIFY** the above to be a full, true and correct copy of a Resolution duly adopted by the Zoning Board of Appeals of the Town of Oswego, on the date mentioned, in accordance with the vote recorded above.

Dated: January 23, 2023

  
KATHY DELANEY  
SECRETARY  
ZONING BOARD OF APPEALS



# Tompkins County Clerk Recording Page

**Return To**

DELAWARE RIVER SOLAR, LLC  
140 EAST 45TH STREET  
NEW YORK, NY 10017

**Maureen Reynolds, County Clerk**

Tompkins County Clerk  
320 North Tioga Street  
Ithaca, NY 14850  
(607) 274-5431

Document Type: **LEASE**

<b>Grantor (Party 1)</b>
YOUNG, JOHN F

<b>Fees</b>	
Recording Fee	\$20.00
TP-584 Form Fee	\$5.00
Pages Fee	\$30.00
State Surcharge	\$20.00
<b>Total Fees Paid:</b>	<b>\$75.00</b>

Receipt Number: 24-397346

<b>Grantee (Party 2)</b>
MONGAUP RIVER SOLAR LLC

Transfer Amt: \$0.00
----------------------

Instrument #: 2024-01909
Transfer Tax #: 001199

Property located in **Lansing**

State of New York  
County of Tompkins

Recorded on February 29th, 2024 at 3:06:09  
PM with a total page count of **6**.

**Tompkins County Clerk**

*This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York*

## MEMORANDUM OF LEASE

Section: 44  
Block: 1  
Lot: 1.2 & 3.3

This is a Memorandum of Lease ("Memorandum") made and entered into as of this 26 day of February, 2024, by and between John F. Young, Susan M. Barnett, James R. Young, and Julie R. Young (hereinafter "Lessor"), with an address at 3105 N Triphammer Rd Suite 1 Lansing, NY 14882 and **MONGAUP RIVER SOLAR, LLC**, a New York limited liability company (hereinafter "Lessee"), with an office at 140 East 45 Street, Suite 32B-1, New York, New York 10017, upon the following terms:

1. **Lease.** The provisions set forth in a written lease between the parties hereto dated 2/26/24 the "Lease"), are hereby incorporated by reference into this Memorandum.

2. **Demised Premises.** The Demised Premises which are the subject of the Lease are a portion of the property located at North Triphammer Road, Lansing, NY 14882 and being more particularly described as follows: **See Attached Exhibit "A"**

3. **Commencement Date of Lease.** The Lease shall be deemed to have commenced on Feb. 26, 2024 ("Effective Date") as set forth within the terms of the Lease.

4. **Term.** The term of the Lease ("Term") commenced on the Effective Date of the Lease and ends on the thirty (30) year anniversary of the Commercial Operation Date (as described in the Lease) of the solar facility to be constructed by Lessee on the Demised Premises ("System"). Lessee shall have the right, at its election, to extend the Term of the Lease by two (2) extension periods of five (5) years each or in any other such manner as prescribed in the Lease.

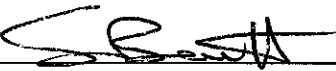
5. **Successor and Assigns.** The Lease Agreement provides that the provisions of the Lease Agreement run with the land and are binding upon and inure to the benefit of the successors and assigns of each party.

6. **Purpose.** It is expressly understood and agreed by all parties that the sole purpose of this Memorandum of Lease is to give record notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between Lessor and Lessee with respect to the Demised Premises and is hereby incorporated by reference. The Lease contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which govern the Lease. This Memorandum is for information purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall control.

7. **Counterparts.** Counterpart originals may be assembled in order to make one complete copy of this Memorandum and all such counterpart originals, when taken together, shall comprise but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease pursuant to due authorization on the dates herein acknowledged.

LESSOR:



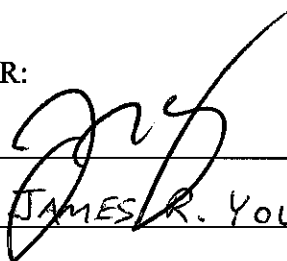
Name: SUSAN M. BARNETT

LESSOR:



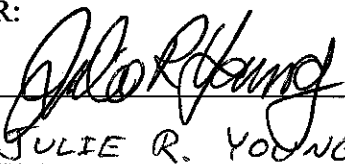
Name: JOHN F. YOUNG

LESSOR:



Name: JAMES R. YOUNG

LESSOR:



Name: JULIE R. YOUNG

LESSEE:

Mongaup River Solar, LLC

By: 

Name: PETER DOLGOS

Title: SVP

STATE OF NEW YORK :  
: ss.:  
COUNTY OF TOMPKINS :

On the 12<sup>th</sup> day of February, 2024 before me, the undersigned, personally appeared JOHN F. YOUNG, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

Angela P. Zhe  
Notary Public

**ANGELA P. ZHE**  
Notary Public, State of New York  
No. 01ZH6168176  
Qualified in Tompkins County  
My Commission Expires June 11, 2027

STATE OF NEW YORK :  
: ss.:  
COUNTY OF TOMPKINS :

On the 12<sup>th</sup> day of February, 2024 before me, the undersigned, personally appeared SUSAN M. BARNETT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

Angela P. Zhe  
Notary Public

**ANGELA P. ZHE**  
Notary Public, State of New York  
No. 01ZH6168176  
Qualified in Tompkins County  
My Commission Expires June 11, 2027

COMMONWEALTH OF PENNSYLVANIA :  
: ss.:  
COUNTY OF McKEAN :

On the 5 day of February, 2024 before me, the undersigned, personally appeared JAMES R. YOUNG and JULIE R. YOUNG, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

Melissa Jo Smith  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
Melissa Jo Smith, Notary Public  
McKean County  
My commission expires March 22, 2025  
Commission number 1155487  
Member, Pennsylvania Association of Notaries

STATE OF NEW YORK :  
COUNTY OF NEW YORK : ss.:

On the 26 day of February, 2024 before me, the undersigned, personally appeared Peter Aulisio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

[Signature] 02/26/24  
Notary Public

GARRETT CHRISTOPHER HERMANN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01HE6437332  
Qualified in Kings County  
My Commission Expires 08-01-2026

**Record and Return to:**  
**Mongaup River Solar, LLC**  
**140 East 45th Street, Suite 32B-1**  
**New York, NY 10017**







Draft #: 1 Date: 4/8/2024

Approved Date: \_\_\_\_\_

## Project Summary

---

### **North Triphammer Road Project #1 and #2**

**Project #1 - SBL: #144-1-1.2 5MW Solar Facility**

**Project #2 - SBL#: 44-1-3.3 3MW Solar Facility**

Prepared for:

**Town of Lansing**

**Tompkins County, New York**

Prepared by:  
NY Lansing I, LLC & NY Lansing II, LLC  
P.O. Box 384  
Callicoon NY, 12783

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### ACRONYMS

- AC Alternating Current
- DC Direct Current
- kV Kilovolt
- MW Megawatt
- PV Photovoltaic
- roHS Restriction of Hazardous Substances



## INTRODUCTION

Project Owner has prepared this project summary for the proposed development, installation, and operation of a Solar Energy Facility (“Solar Facility”) including an interconnection line to interconnect the Solar Facility to the Utility electrical grid. The proposed Solar Facility and Interconnection Line are referred to collectively as the Project.

This Project is being submitted to the Town as part of the application with respect to the special use permit and site plan review by the Town as set forth in the Code of the Town’s Solar Law. The Solar Facility is considered a Solar Energy Facility.

The proposed site for the Solar Facility Project Site is on land within the Property. Lot Coverage was calculated by total impervious surface coverage which includes flat panel area, access road, rain gardens as a percentage of the area of the Solar Facility Project Site. The Property access is located north of 2699 N Triphammer Road, within the jurisdiction of the Town.

The connection of the Solar Facility to the Utility electrical grid, including the specific interconnection equipment, is pursuant to a standard Interconnection Agreement executed between the Project Owner and Utility. The Solar Facility will have a total generation capacity of not more than 5.0 MW AC for project #1 and 3 MW AC for Project #2. The generation capacity will be limited by the final site plan approved by the Town.

Energy generated from the Solar Facility will be distributed to the Utility for use by the Utility’s customers and directly benefit customers enrolled in a Community Solar Program provided by or on behalf of the Project Owner. The objective of the Community Solar Program is to offer electricity at a discount to the Utility’s rate. The Project Owner’s goal is to provide residences and businesses in the Town with the opportunity to enroll in a Community Solar Program.

The Solar Facility design will adhere to technical and environmental requirements in accordance with current federal state and Town laws, including all applicable codes, regulations, and industry standards as referenced in the and Building Code, the Energy Code, and the Solar Law.

**Key Attributes of the Project Include:**

- Direct conversion of sunlight to electricity without generation of waste materials.
- Solar power generated producing no carbon emissions or air pollutants.
- Minimal ambient noise generated during solar power generation, no nighttime noise.
- Minimal traffic disturbance during Project operational lifespan.
- No use of public water utilities.
- Uniform Array Height with minimal visual effects
- Non-array structures approximately 8 feet in height to minimize visual effects.
- Existing vegetation around the Project Site will minimize visual effects.
- Modules secured using a racking system minimizing ground grading and ground disturbance.

This Project Summary includes general descriptions of and guidelines for design, construction, operation, maintenance, and decommissioning of the Projects. Design, construction, operation, maintenance, and decommissioning of the Projects will meet or exceed the requirements of the National Electrical Safety Code and U.S. Department of Labor Occupational Safety and Health Standards, as well as Town requirements for the safety and protection of landowners and Property. Project Owner may submit additional materials/documents regarding the above containing more detail (including a separate Decommissioning Plan and Operations and Maintenance Plan).

The Project Owner has compiled this Project Summary to the best of its knowledge, based upon currently available information. Certain additional reports, such as topography, geotechnical, and environmental, have been completed.

**THE INFORMATION CONTAINED IN THIS PROJECT SUMMARY IS NOT INTENDED TO DESCRIBE ALL RELEVANT PROJECT INFORMATION AND IS QUALIFIED IN ITS ENTIRETY BY THE PROJECT OWNER'S FINAL APPLICATION AND SITE PLANS APPROVED BY THE TOWN DURING THE TOWN'S REVIEW PROCESS.**

### 1.1. Purpose

Provide a cost-effective source of renewable solar electricity. Additional objectives include:

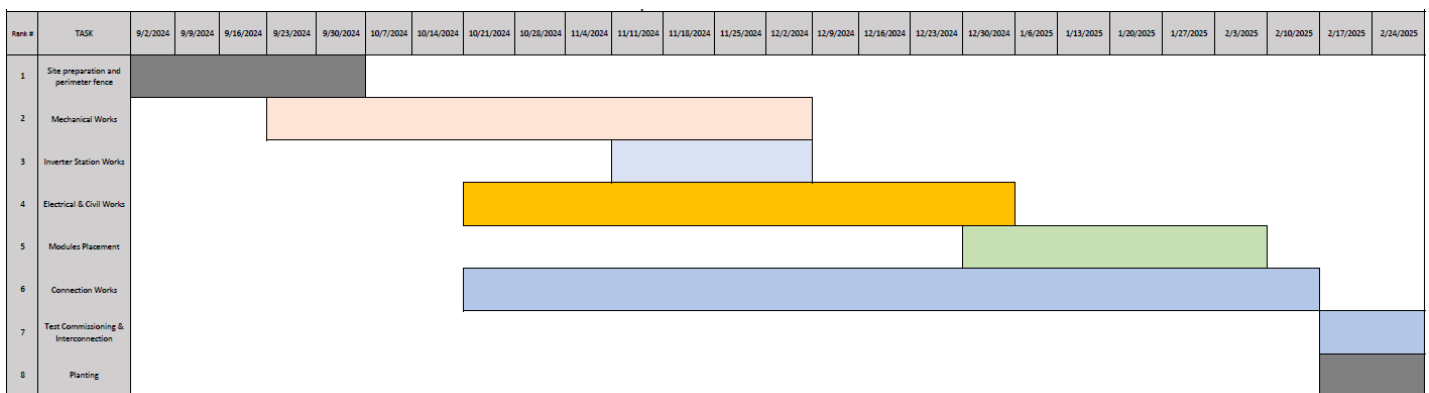
- Develop a solar generation facility that is feasible, quick to construct and easy to operate while providing the Utility and its customers with a cost-effective, cleaner energy alternative.
- Establish emission-free solar electricity and reduce greenhouse gas emissions while avoiding, minimizing, and mitigating the impacts to the environment.
- Generate electricity without local utility needs.
- Provide other important economic and environmental benefits to the Utility and the Town, including improving local air quality and public health, developing local energy sources, promoting local jobs, and diversifying the energy supply.
- Contribute to the State of New York renewable energy goals.

Based on historical information, the average energy usage for a standard home is 10,000 kWh/year. The proposed Solar Facility for Project #1 would generate approximately 7,700,000 kWh/year, equivalent to the electricity consumption of 700 homes. The proposed Solar Facility for Project #2 would generate approximately 4,900,000 kWh/year, equivalent to the electricity consumption of 490 homes. The Project Owner’s goal is to provide residents and businesses in the Town the opportunity to enroll in a Community Solar Program.

### 1.2. Estimated Construction Schedule

Construction of the Project is estimated to take approximately 6 months to complete. An example timeline is below:

**Table 1. Gantt’s Diagram**



## 2.0. PROJECT DESCRIPTION



### 2.1. Project Site and Control

Selection of the Project Site over other locations is based on several site criteria including:

- Contiguous site with suitable topography of adequate size to host the Solar Facility.
- Proximity to existing Utility electrical grid.
- Availability, lease agreement with current or future landowner.
- Avoiding sensitive areas, such as rivers, lakes, etc.
- Minimizing visual impact by utilizing the topography and existing vegetation on the property.
- Good highway access for construction, operation, and maintenance activities.

The Project Site will be leased from the Property Owner and/or purchased.

The proposed Project Sites are located on the Property (See Figure 1a and the Property parcel with purple marker). Project Site access will be from the Access Point (see Figure 1b). There will need to be a proposed lot line improvement for this project, which will be sent to the Town in a future submission and the Project summary will be updated in a future draft.

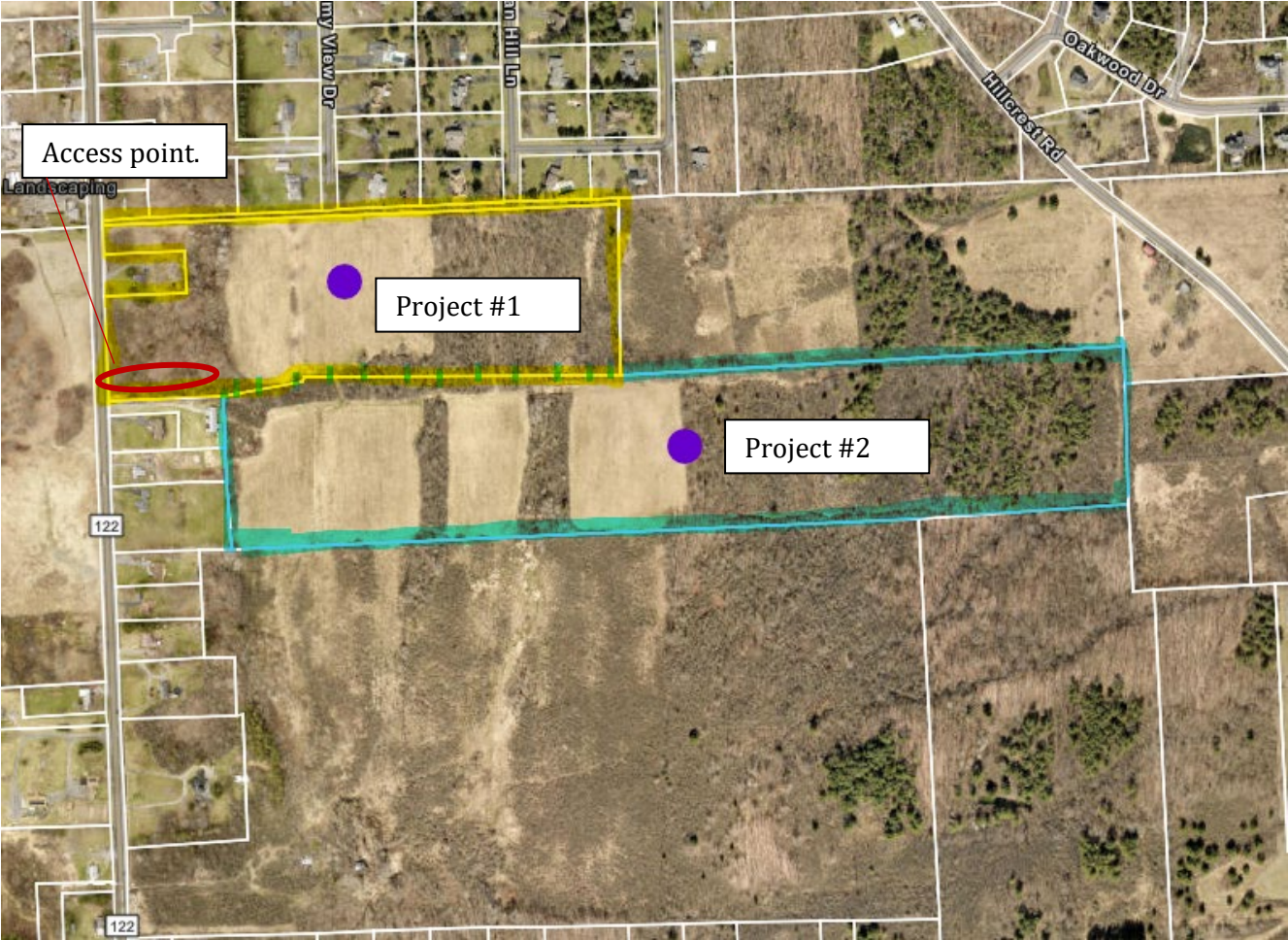


Figure 1a. Property Location



Figure 1b. Access Point

## 2.2. General Overview of Solar Facility

A grid-connected photovoltaic (“PV”) power system is an electricity generating solar system that is connected to the Utility electrical grid. A grid-connected system consists of solar modules one or more inverters, a power conditioning unit and grid connection equipment. The proposed installation is composed of a field of photovoltaic generators (See Figure 2).

The Solar Facility is composed of monocrystalline photovoltaic modules. Modules are electrically interconnected in series of strings and can be mounted on racking that can either 1) track the path of the sun or 2) is fixed at orientation and tilt angle.

To collect all DC output, an inverter station and step-up power transformer will be interconnected, conditioning the electric parameters for feeding energy to the Utility electric distribution network. Power



generated from the modules will be transferred via shielded cables within underground conduits to switch gear which forms part of the main power generation facility.

The modules are electrically protected, and above-grade wires are both shielded and secured to avoid exposure or accidental contact. All necessary protections for this type of facility and supporting structures for photovoltaic modules are included.

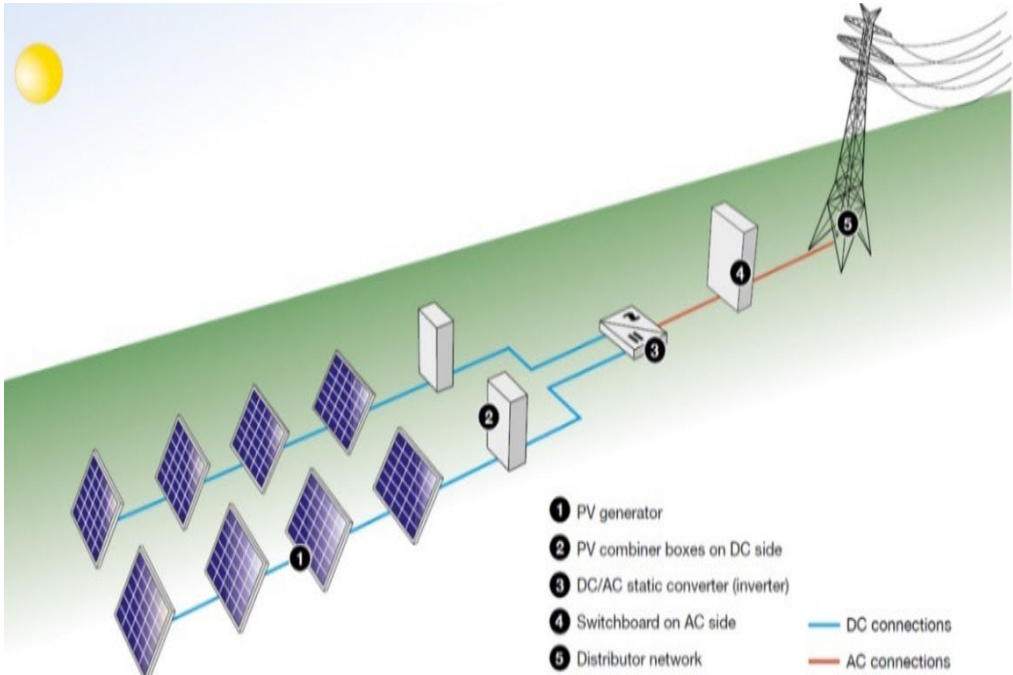


Figure 2. Diagram of a Grid-Connected Photovoltaic Facility

**2.3. Acreage and General Dimensions of the Project Site**

The Property is owned by the Property Owner, and the Project Site is a part of the Property. Surface Coverage is based on total impervious surface area including the flat panel area, access road, rain gardens occupying the land as a percentage of the Project Site. The Interconnection Line assumes a maximum of 20 ft of temporary, and 2 ft. permanent wide trench.

**2.4. Solar Facility**

The following sections describe the major components of the Solar Facility. *Selected manufacturers are not indicated as equipment selection may change during the design and permitting process due to market and economic conditions.* The final selected equipment is expected to be substantially similar to those proposed.

**2.4.1. Summary of Project Components**

Supporting structures are set considering economic, technical and land conditions for the modules to capture the most amount of solar radiation and obtain the best solar yield possible. The arrays are distributed into rows and consider surrounding shadings in the array design. There are open corridors between the rows of modules to perform construction and allow maintenance. The inverter station, which contains the transformer, will connect the Solar Facility to the existing Utility distribution network.

**2.4.2. Solar Modules**

The module manufacturer will depend on the availability of the modules during the procurement period. Manufacturer equipment specification sheets will be provided to the Town along with the Project’s building permit application. The solar modules will meet New York’s Uniform Fire Prevention and Building Code Standards. Expected minimum requirements of the modules are:

- Conform with IEC 61215, IEC 61730, IEC 61701, UL 61730 Solar Project Standards and other certificates.
- Project Standards and other certificates.
- High Module Conversion Efficiencies
- Dimensions 2384x1096x35mm
- Cell type: Monocrystalline
- Maximum System Voltage: 1500 Vdc (UL)
- Efficiency up to 21 %
- 30 years power output warranty
- Electrical Characteristics STC
- Values at Standard Test Conditions STC (Air Mass AM1.5, Irradiance 1000W/m<sup>2</sup>, Cell Temperature 25°)

**2.4.3. Supporting Structures**

Evaluation of the structural design of support for the modules shall account for permanent loads, snow and wind loads, seismic conditions, structural calculation and foundations, module sizing, control of connections, geotechnical analysis and effects of temperature changes in accordance with applicable law and Building Code.

The metal supporting bases for modules shall be hot dip galvanized steel components with a minimum average thickness of 70µm as ISO/EN 1461 or equivalent or by an appropriate anodized aluminum of heavy-duty type and alloy for the better anti-corrosion protection of the construction. All connections including bolts/nuts, shall be of A2 stainless steel or compliant with other industry standard practices appropriate for the application defined.

To minimize ground disturbance, the supporting bases will be pile driven into the ground, considering the results of a geotechnical study. Following are several examples of the potential support structure considered for the Project.

Tracker Racking in Stowed Position:

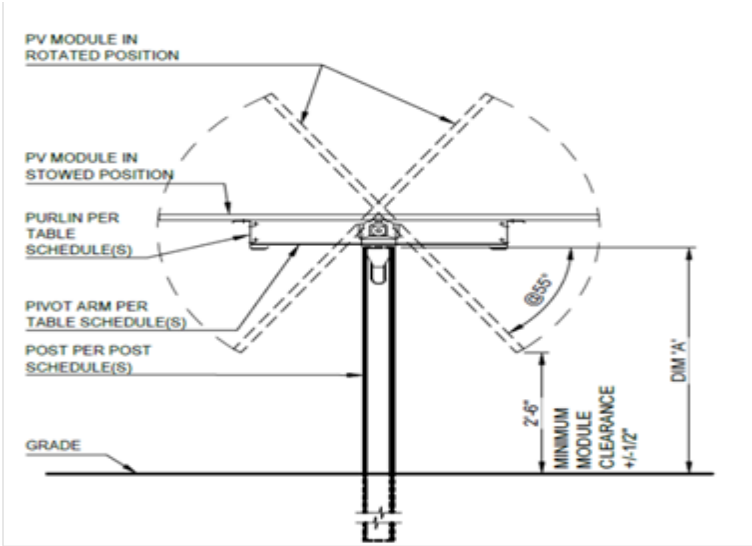


Figure 3a. Supporting Structure Overview (Tracker)

Key points of the Supporting Structure:

- Portrait mounting
- Mono-post anchored to the ground
- All connections bolted without welding.
- One tie bar and a crossbar in which the straps are supported

The module height above ground once attached to the tracker racking, is expected to be approximately 3 feet at the low-end with minimal visual effects at the Maximum Array Height.

Fixed-Tilt Racking:



Figure 3b. Supporting Structure Overview

In the case of fixed-tilt racking, the module height above ground once attached to the racking, is expected to be approximately 3 feet at the low-end and have visual effects at the Maximum Array Height.

## 2.5. Inverter and Transformer Station (“MV Station”)

The MV Station is inside a standard-sized outdoor container protected with weather-proof material to NEMA 4X protection degree and houses an inverter, transformer, power distribution and monitoring unit. The MV Station converts DC current generated from the PV array into grid-compatible AC current, which can be directly fed into the medium voltage grid.

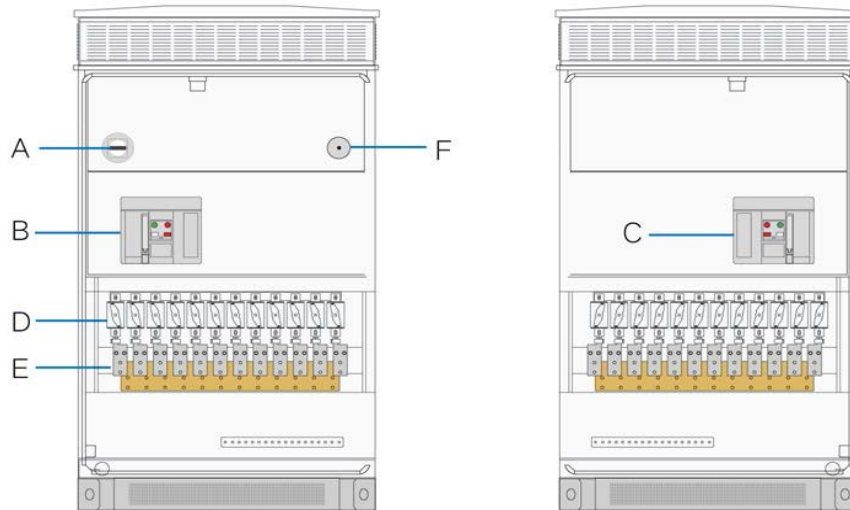
### 2.5.1. Inverter

The inverter, part of a MV Station, shall meet at least the following requirements, international standards and tested by:

- UL 1741, UL 1741 SA
- IEEE 1547
- Rule 21
- NEC Code

DC load break switches and AC circuit breakers are provided on the inverter.

The DC cabinet of the inverter is shown in the following figure:



*Figure 4. Inverter (Example)*

No.	Name	Description
A	AC maintenance switch	Disconnect the switch before maintaining AC cabinet components.
B	QS1, DC load break switch 1	Disconnect the switch before maintaining AC cabinet components.
C	QS2, DC load break switch 2	Connect/disconnect the DC side of the unit 2.
D	Fuse	---
E	DC connection area	The upper part of the copper bar is for positive cable connection area while the lower part is for negative cable connection.
F	DC maintenance switch	Disconnect the switch before maintaining DC cabinet components.

### 2.5.2. Transformer

The transformer, part of a MV Station, is designed for installation at medium and large-scale utility solar facilities. Critical power connections are completed and tested in a factory environment and the pre-tested unit is shipped to the field ready for the final field connections. Factory manufactured MV Stations reduce installation and commissioning time. The all-in-one solution simplifies the installation, saves space and the visual impact is lower than other configuration options.

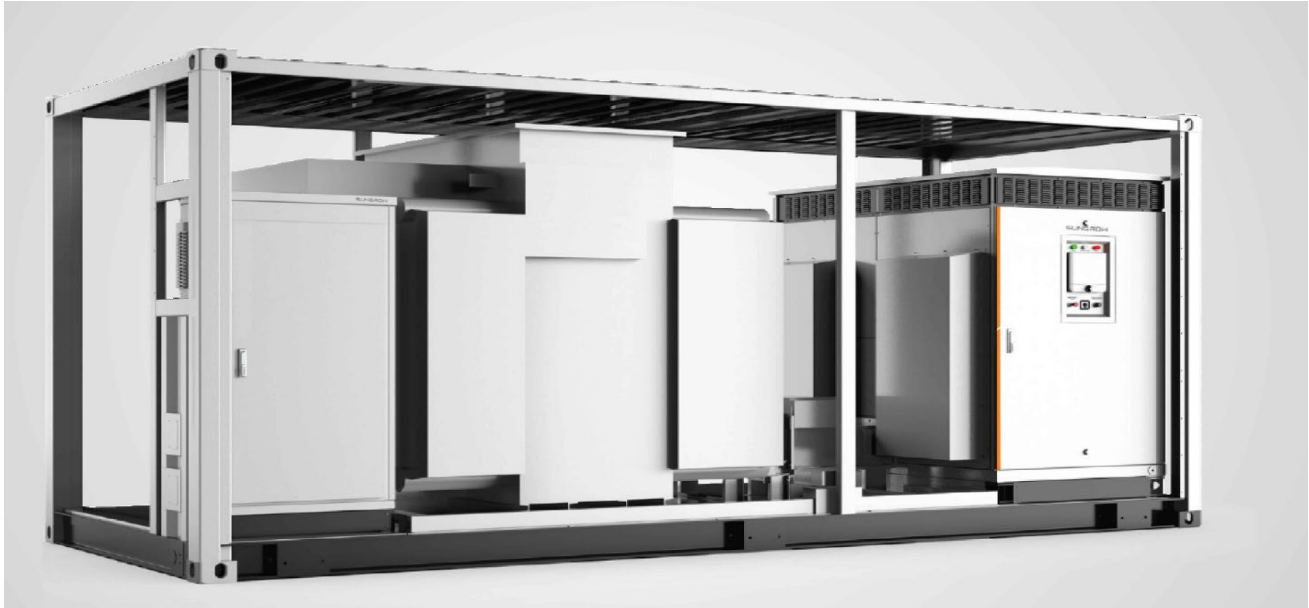


Figure 5. “All-in-one” LV Cabinet, Inverter, & Transformer Station

## 2.6. Electrical Installation

This section contains the remainder of the electrical devices required in the Solar Facility.

### 2.6.1. DC Electric Switchboards

Within each array, strings of modules are to be combined in parallel in a combiner box with a protection rating of NEMA 3R or above. The combiner boxes will have at least the following characteristics:

- Suitable for outdoor installation
- Designed for UV resistance
- Protection isolation
- Grounding copper tape
- Anti-condensation filter
- Mounting lugs and required nuts and bolts for installation
- Self-extinguishing and halogen-free materials
- Cable glands for output DC cable (up to 4x1x300mm<sup>2</sup> Al XLPE cable; defined per project) and signaling cable input & output
- Cable glands for communication cable and grounding cable
- DC fuse in negative pole per string
- Coverage of electrical items with methacrylate plate
- Disconnecting isolators 1500VDC must comply with applicable standards
- Fitted with surge protection Device, 3pole, 1500Vdc, 40kA
- Fully labeled and color-coded wiring (as per project all strings)
- Appropriate number of string inputs and associated fuse sizing
- In case of armored cable, glands have to be able to earth the aluminum armor



Operational ambient conditions are to be as follows:

- Temperature: 77.0°F to + 10.0 °F
- Relative humidity: 15 to 95 %

**2.6.2. Wiring**

Two types of wiring will be required in the Project, from modules to DC Box, and from DC Box to the general DC Disconnect Switch. Cables will meet the requirements of UL standard 4703, appropriate for solar photovoltaic applications.

Wiring will consist of single conductor, sunlight-resistant, direct burial photovoltaic wire, 2000 V for interconnection wiring of grounded and ungrounded photovoltaic power systems with the following features:

- Rated 90°C wet and dry
- Rated for direct burial
- Deformation-resistant at high temperatures
- Excellent moisture resistance, exceeds UL 44
- Stable electrical properties over a broad temperature range
- Increased flexibility
- Excellent resistance to crush and compression cuts
- Resistant to most oils and chemicals
- UV/sunlight-resistant
- Meets cold bend and cold impact tests at -40°C

**2.6.3. Grounding**

Metal enclosures containing electrical conductors or other electrical components may become energized as a result of insulation or mechanical failures. Energized metal surfaces, including the metal frames of modules, can present electrical shock and fire hazards.

By properly bonding exposed metal surfaces together and to the earth, the potential difference between earth and the conductive surface during a fault condition is reduced to near zero, reducing electric shock potential. The proper bonding to earth by the equipment grounding system is essential, because most of the environment (including most conductive surfaces and the earth itself) is at earth potential. The conductors used to bond the various exposed metal surfaces together are known as equipment grounding conductors (“EGC”).

The metallic device used to make contact with the earth is the *grounding electrode*. The conductor that connects the central grounding point (where the equipment grounding system is connected to the grounded circuit conductor on grounded systems) and a grounding electrode that is in contact with the earth is known as the *grounding electrode conductor* (“GEC”).

Combined Direct-Current Grounding-Electrode Conductor and Alternating-Current Equipment Grounding Conductor: An unspliced, or irreversibly spliced, combined grounding conductor shall be run from the

marked DC grounding electrode conductor connection point along with the AC circuit conductors to the grounding busbar in the associated ac equipment. See Figure 6.

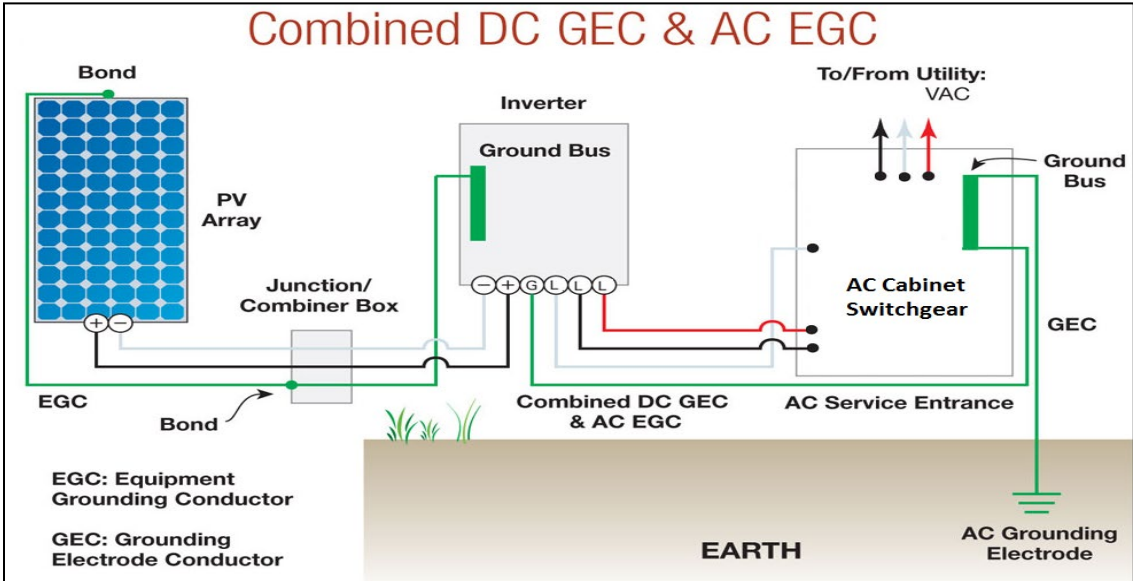


Figure 6. Combined EGC/GEC grounding routing Solar Facility

2.7. Monitoring

Sensors include:

- Combiner Box temperature
- Solar irradiation
- Panel temperature
- Ambient temperature
- Wind speed

All sensors such as the weather station and pyranometers must use dedicated MODBUS Channels for the collection of measurements. The MODBUS channels cannot exceed a maximum of 16 devices (pyranometers, temperature sensors, wind sensors, weather stations) with no other devices such as string monitors, inverters or relays are to be connected to the dedicated MODBUS channel for the weather sensors and pyrometer. All data sent to the Industrial PC (Supervisor software) must be received using MODBUS TCP protocol.

The monitoring system considered is centralized. This becomes possible by using the Inverter Station as a core data collection through a basic set of equipment. It is first necessary to obtain the values of the different variables to monitor. The monitoring system can monitor the AC installation and the DC installation (panels). For monitoring smaller parts of the DC installation at the inverter level there are more Combiner Boxes of lesser strings.

The best way to capture inverter information is using a system to provide communication with a PC. The inverter's own hardware is used for measurement, (hardware that is already included with the central

inverter). The price of a centralized monitoring system is usually lower than other solutions. Measuring switchboards have the advantage that they can monitor multiple system parameters, such as level of harmonics, phase equilibrium, etc.

The inverter station is a central monitoring system of the Solar Facility with these features:

- Grid visualization
- Generator visualization
- Inverter visualization
- Clearly visible external warning signals concerning voltage at the base of pad-mounted transformer and substation
- Registers
- Fault history visualization
- Warning history visualization
- Status visualization
- Internal debug
- \* SI visualization menu

**2.8. Mid Voltage Connection**

The Solar Facility will satisfy the Utility technical interconnection requirements in order to work in parallel with the Utility distribution system. The Project will meet the following requirements:

- Voltage response range
- Frequency response range
- Inverters certified
- Protective function requirements
- Metering
- Operating requirements
- Dedicated transformer
- Disconnect switch
- Power quality
- Power factor
- Islanding
- Equipment certification
- Verification testing
- Interconnection inventory

**2.8.1. Mid Voltage Interconnection Line**

The proposed Interconnection Lines would be designed for 12.5 kV three-phase Wye-grounded (three conductors) circuits. The Interconnection Line will connect the transformer to the existing electrical grid on the Substation Circuit connecting to the Utility substation bank. The Interconnection Line will be underground until required by the Utility to interconnect to the Utility electrical grid.

The Interconnection Line will be installed in underground conduit. The conductor will be rated at 15 kV, backfilled with select and native backfill, and compacted. The main characteristics of the wire are:

- EPR/Copper Tape Shield with overall LSZH
- Conductor 1350 Aluminum Compact Class B strand
- Three conductor and grounding wire in contact with metallic shielding cape
- Medium-Voltage Power
- Shielded 15 kV
- For use in aerial, conduit, open tray and underground duct installations
- Electrical stability under stress
- Chemical-resistant
- Meets cold bend test at -35°C
- 105°C rating for continuous operation



- UL Type MV-105, 133%
- Ins. Level, 220 Mils
- Rated at 105°C
- Excellent heat and moisture resistance
- Excellent flame resistance
- Flexibility for easy handling
- Low friction for easy pulling
- 140°C rating for emergency overload conditions
- 250°C rating for short circuit conditions
- RoHS Compliant
- According to National Electrical Code (NEC), UL 1072 and more compliances

### 2.8.2. Point of Common Coupling (“PCC”)

The PCC is the point where the Project interconnects with the electric Utility grid.

**Table 3. PCC Configuration Summary**

Line Voltage at PCC (kV)	34.5
PCC Line Type	3 phase
PCC Line Configuration	Wye-Wye

### 2.8.3. AC Generator Disconnect Switch

In order to isolate and protect the Solar Facility from the Utility electrical grid, a load break disconnecting switch is necessary. The 3-phase disconnect switch located between the generating equipment and interconnection at the PCC, must be manual, visible, lockable and gang-operated. The Project Owner will have 24-hour/7-day unlimited access and control of this isolation switch.

The disconnect switch must be rated for the voltage and current requirements of the installation. Disconnecting means shall be rated to interrupt the maximum generator output; meet applicable Underwriters Laboratories (UL), American National Standards Institute (ANSI), and Institute of Electrical and Electronic Engineering (IEEE) standards; and shall be installed to meet the NEC and all applicable local, state, and federal codes. It will be clearly marked with permanent larger letters: “Generator Disconnect Switch”.

In accordance with the Project Owner's safety rules and practices, this isolation device must be used to establish a visually open, working clearance boundary when performing maintenance and repair work. The designated generator disconnect also must be accessible and lockable in the open position and have provisions for both Project Owner and Utility padlocks and be capable of being tagged and grounded on the Project Owner side by Project Owner personnel.

The visible generator disconnect switch shall be a gang-operated, blade-type switch (knife switch) meeting the requirements of the NEC and nationally recognized product standards. Installation will also require a recloser with remote control and data access to be installed to:

- Monitor voltage current
- Provide for remote disconnect
- Act as a Utility controlled redundant protection system

## 2.9. Operation and Maintenance

The Property operation and maintenance plan requirement for a Solar System set forth in the Solar Law reads as follows:

### Local Law #3 of 2020 Section 802.18.1 (ix)

*ix. An operation and maintenance plan, including description of continuing Solar Energy Facility maintenance and property upkeep, such as mowing and trimming, safe access to the installation, as well as general procedures for operational inspections and maintenance of the installation.*

*x. An operation and maintenance plan, including description of continuing Solar Energy Facility maintenance and property upkeep, such as mowing and trimming, safe access to the installation, as well as general procedures for operational inspections and maintenance of the installation.*

A separate “stand alone” Operations and Maintenance Plan (“O&M Plan”) has been submitted to the Town as part of the application for a special use permit and site plan approval. The O&M Plan is submitted separately for ease of tracking the Solar Law requirements.

The following is a summary of general operation and maintenance activities:

During operation, maintenance activities will focus on the scheduled preventive maintenance and repairs of the solar generating equipment. The maintenance and repair of Project components is expected to be coordinated through monitoring, on-site inspections, and technical support from the various warranty services provided by the equipment manufacturers. Unsafe, inoperable, and/or abandoned equipment, shall be removed by the Project Owner.

The Solar Facility will operate 7 days per week, generating electricity during daylight hours. Preventive maintenance activities will occur during normal working hours, generally twice per year, with the occasional need to conduct corrective maintenance to certain equipment or facilities during non-scheduled or weekend hours.

The solar generating equipment will be continuously monitored and controlled from a central control room during normal working hours with 24-hour monitoring from a remote source. The generation units, auxiliary systems and balance of the Solar Facility will be connected to a Supervisory Control and Data Acquisition system (“SCADA”).

Standard maintenance for the Solar Facility will include:

- **Modules Cleaning:** Module cleaning will be performed during preventive maintenance visits on an as-needed basis following extraordinary snowstorms. Module cleaning does not involve use of chemicals.
- **Scheduled Project Maintenance:** There will be the need to periodically inspect the modules (snow, ice, grass, vegetation) and make necessary alignment adjustments (i.e. tighten fasteners) or replace damaged modules to prevent breakdowns and production losses. Project components will go through maintenance checklist once or twice per year.

The checklist shall include such items as:

- Checking wire connections
  - Testing voltage/current
  - Inspecting components for moisture
  - Confirming settings on the inverter
  - Transformer maintenance
  - Resealing of system components
- **Corrective Maintenance:** Corrective maintenance will occasionally be required due to uncontrollable circumstances such as severe weather or premature failure of components. These unscheduled repairs will be undertaken in a manner to minimize impacts to the continued operation of the **Solar Facility**.
  - **Monitoring Management:** uses real-time data to oversee Project parameters.



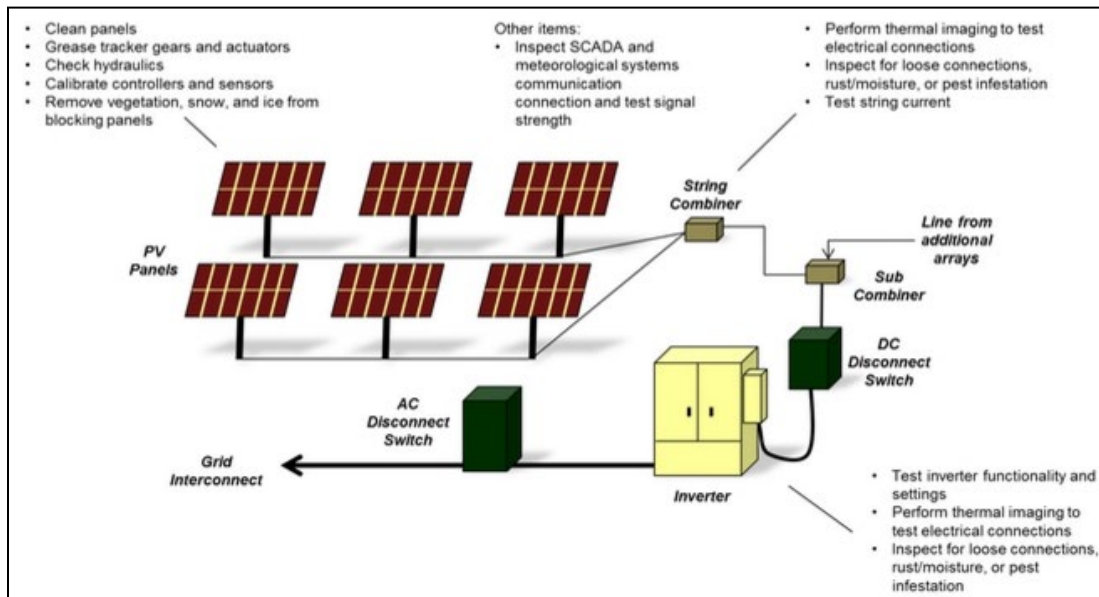


Figure 7. Highlights of the *Solar Facility Maintenance*

Typical equipment required to support operation and maintenance of the Solar Facility includes:

- Cleaning systems
- Standard electrical tools
- Building support systems
- Transport vehicles (pick-up truck, ATV, etc.)
- Standard mechanics tools

Project Site Maintenance: Frequency of site visits shall be determined based on season (more in summer, less in winter), but no less than quarterly to monitor vegetation. Any required corrective actions will be taken as soon as practical or warranted by the circumstances. Typical activities include:

- Visually inspect and report on all fencing for signs of damage, intrusion, and overgrowth of vegetation.
- Inspect signage to ensure all originally installed signs are present and legible.
- Maintenance of access road, including snow removal as needed.
- Vegetation may need to be trimmed or cut back to avoid shading of the solar modules. Shading inspections will be done semi-annually, and trimming will occur as needed. This would include ground cover, existing vegetation, and screening vegetation. Ground cover will be either mowed, as needed, or sheep may be utilized to graze the array area.
- Adherence to any Storm Water Pollution Prevention Plan practices, if any



**2.10. Site Security**

Limiting access to the Project Site to non-authorized personnel is necessary both to ensure the safety of the public and to protect equipment from potential theft and vandalism.

The perimeter of the Solar Facility will be fenced with an approximately eight-foot-high fence to facilitate Project and equipment security (see Figure 8 for proposed fencing type). Surveillance methods such as security cameras or motion detectors may be installed at locations along the Project Site boundary. There is no lighting proposed on the Project Site. Warning signs with the Project Owner’s phone number will appear on signs placed at the entrance and perimeter of the of the Solar Facility.



*Figure 8. Fencing*

**2.11. Temporary Construction**

Temporary construction staging areas are required for temporary construction offices, construction parking, material laydown and storage areas, an equipment assembly area, and portable toilet facilities. These areas will be located on the Project Site and used throughout the Project construction period and then decommissioned. The exact location of the temporary construction staging areas will be defined in the drawings.

Graded all-weather roads may be required in selected locations on the Project Site during construction to bring equipment and materials from the staging areas to the construction work areas. These roads may not be decommissioned after construction and may be utilized for long-term Project operation and maintenance.



**2.12. Water Uses and Sources**

The Project will not use any utility water for electrical power generation.

**2.13. Erosion Control and Storm Water Drainage**

A Storm Water Pollution Prevention Plan (SWPPP) study has been prepared, submitted and reviewed by the Town’s review engineer.

**2.14. Vegetation Treatment and Management**

The Project Site consists of low volume forest land with dense undergrowth. The project site will be cleared for the construction of the project. Native vegetation (low growing grasses) will be planted after construction to grow amongst the solar panels.

**2.15. Waste Materials Management**

The Project will generate a variety of non-hazardous wastes during construction and operation. These waste items may include the materials listed in Table 4:

<b>Table 4: Waste and Hazardous Materials Management</b>	
<b>Item</b>	<b>Description</b>
PVC Cement	Adhesive used for underground PVC conduit and ground sleeve
Cardboard	General packaging
Plastic	General packaging, wiring coating
Cold Galv	Anti-rust galvanizing spray used when cutting material to prevent rust.
Copper & Aluminum	Wiring systems trims

Material Safety Data Sheets (“MSDS”) will be maintained at the Project Site during construction. All waste shall be disposed of according to what is specified in the MSDS.

**2.15.1. Construction Waste Management**

During construction, inert solid wastes may include recyclable items such as paper, cardboard, solid concrete, metals and wire, Type 1 to 4 plastics, drywall, and wood. Non-recyclable items include insulation, other plastics, food waste, packing materials, and other construction wastes. Management of wastes will be the responsibility of the Project Owner. Typical management practices required for contractor waste include recycling, when possible, proper storage of waste and debris to prevent wind periodic transport and disposal of waste by an authorized trash hauler. A waste management plan will be implemented during construction.



It is expected that a 40-cubic-yard container will be staged at the Project Site and emptied (exchanged) on an “as needed” basis. Construction waste is not expected to have an impact on public health. No hazardous wastes are expected.

**2.15.2. Operations Waste Management**

During operations, inert solid wastes generated would be predominantly routine maintenance wastes, such as scrap metal, wood, and plastic from surplus and deactivated equipment. Scrap materials such as paper, packing materials, glass, metals, and plastics will be segregated for recycling. Non-recyclable inert wastes would be stored in covered trash bins in accordance with local ordinances and picked up by an authorized local trash hauler for transport and disposal.

**2.16. Fire Protection**

Fire protection at the Project Site will include safety measures to ensure the safeguarding of human life, prevent personnel injury, and preserving property. The Project Owner will offer to meet with the local fire department(s) to provide them with information related to the Project.

**2.17. Health and Safety**

A “Health and Safety” plan will be in effect during construction with regular inspections. Workers will be required to use personal protective equipment (“PPE”) during construction activities. Required PPE will be approved for use, distinctly marked to facilitate identification, and be used in accordance with the manufacturer’s instructions. The PPE will be of such design, fit, and durability as to provide adequate protection against the hazards for which it is designed. The use of PPE for site activities includes but is not limited to safety glasses or goggles, hardhat, earplugs, dust mask, leather and/or insulated gloves, safety-toe and/or metatarsal shoes, apron, and safety belt.

During construction, a first aid station, complete with all emergency medical supplies, will be located on the Project Site.

**3.0. CONSTRUCTION OF THE SOLAR FACILITY**

The following section generally describes the activities that are anticipated to occur before and during Project construction and throughout operation and maintenance of the Project.



### 3.1. Solar Field Design, Layout, Installation and Construction Processes

The site plan for the Solar Facility is shown in Figure 9a and Figure 9b. The Solar Facility consists of arrays anchored to the ground. Arrays may be reconfigured as required by site characteristics such as parcel boundaries, roads, topography or similar constraints.

The arrays are installed in a block configuration. Modules are attached to horizontal steel shafts supported by vertical steel posts. All panels will have minimal visual effect and the minimum height in relation to the ground will be approximately 3 ft. All mechanical equipment will be completely enclosed by an approximately 8' high fence.

Figure 9a. Project Site Layout Project #1

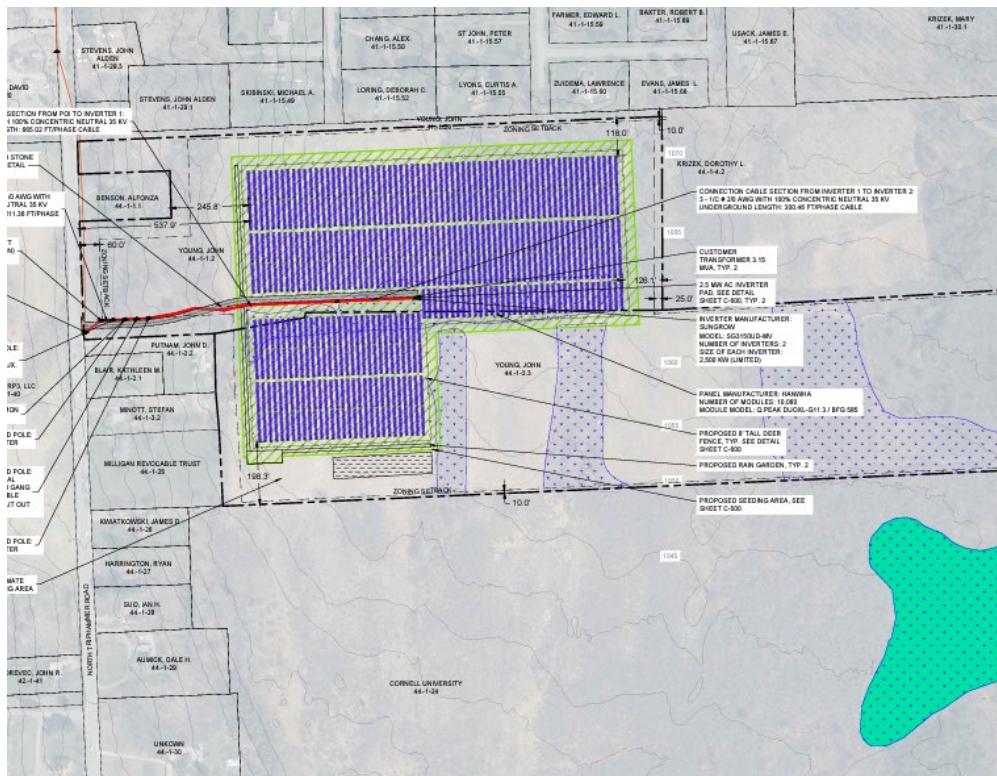
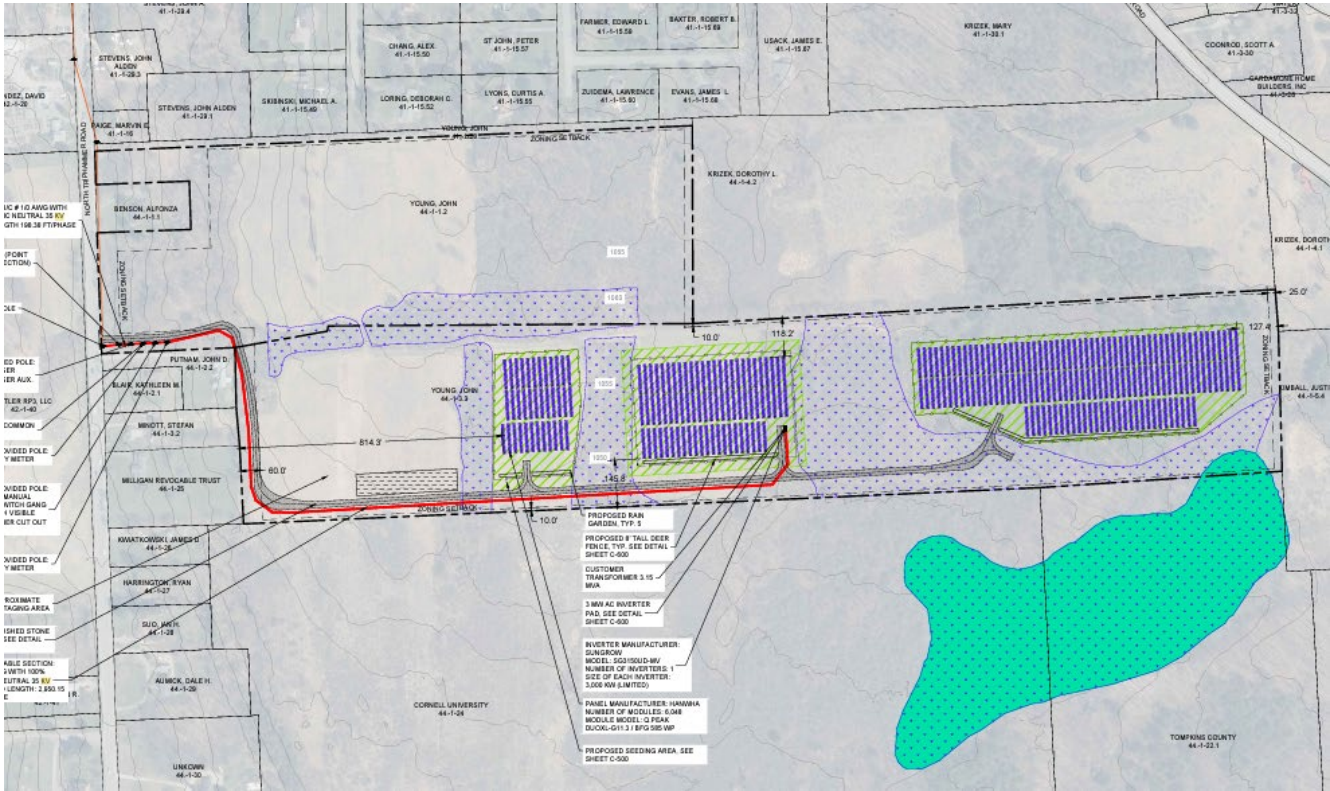




Figure 9b. Project Site Layout Project #2



### 3.2. Access and Transportation System, Component Delivery, Worker Access

The Project Sites access for general construction traffic will be from the Access Point by an access road. Traffic will come from there onto the main access drive to the Project Sites where all deliveries will occur. The Access Point will also be the primary route for workers to access the Project Site. Parking will be provided at the Project Site. It is not expected, but if necessary, a traffic and transportation plan will be developed to address flagging and traffic management along public roads during the construction phase. Construction traffic would continue for approximately six months from the start of construction.

### 3.3. Construction Work Force Numbers, Vehicles, Equipment, Timeframes

Construction activities would include road and access construction, solar installation, operation and maintenance facility construction, Interconnection Line trenching, installation of a direct buried rated Interconnection Line, cleanup, and site reclamation. The anticipated number of workers and type of equipment to construct the Project are provided in Table 5.



Item:	# of Personnel	Equipment
Survey	3	2 pickup trucks
Solar Installation	12	1 piling and drilling machine 1 fork lift 2 trucks
Temporary Road Construction	6	1 excavator 1 road grader 2 trucks
Trench and backfill	4	1 excavator 1 compactor 2 trucks
Interconnection Line	4	1 spool truck 1 trencher 1 truck
Clean-up	4	1 truck
Rehabilitation	2	1 truck
Estimated personnel	35	

**3.4. Site Preparation, Surveying and Staking**

A detailed land survey will be performed to establish local benchmarks and Project Site boundaries. A topographic survey will be performed to establish the Project Site’s grading and drainage plans for the arrays, roadways, and other Project features. A lot line improvement may be needed for the projects and will be submitted at a later date. Detailed maps with GPS coordinates will be supplied to proper authorities having jurisdiction as required for permitting.

A licensed survey team, prior to commencement of construction, will properly stake the Project Site physical boundaries and construction footprints. The survey team will additionally stake the path through any right of ways (“ROW”s) for the Interconnection Lines or provide a detailed map using GPS coordinates.

**3.5. Site Preparation and Vegetation Removal**

Vegetation will only be removed in disturbed areas as required for placement of modules, electrical equipment, access road and drainage swales. Vegetation removal will be minimized as much as possible.

The Project Site is expected to require minimal grading. To the extent possible, the racking system will be adapted to the existing topography. Minimal grading may be required for the inverter and transformer pad.

**3.6. Solar Facility Construction**

Prior to installation of the modules, the supporting steel posts would be installed, generally pile driven to minimize ground disturbance. The modules would be mounted by hand to the steel posts and all necessary



electrical, communications, and other connections will be made. All significant assembly and erection will be conducted on site.

**3.7. Project Construction**

The anticipated Construction Schedule may change based on time of year/product availability.

**3.8. Gravel Needs and Sources**

Gravel needs would be moderate. The main access road, if needed, would use compacted, crushed gravel imported from offsite. Materials will be locally sourced to the extent possible.

**3.9. Electrical Construction Activities**

Power generated by the modules will be collected through a power collection system. The collection system will direct the output from the modules to the on-site transformer to be transmitted through the Interconnection Line to the Utility grid.

**3.10. Interconnection Line Construction Sequence**

The Interconnection Line from the Project Site to poles required the Utility will be underground. The construction of the Interconnection Line is a several step process. The initial step will be clearly surveying the ROW boundaries and marking any existing underground utilities. After the ROW has been staked, excavation equipment can be used to dig the trench. The excavated soil will be used for backfilling or disposed of on-site. When the trench is prepared, the conduit installation process can begin, utilizing the proper backfill around the conduit, if required. Above the conduit placement, the previously excavated native soil can be used to fill in the remaining trench depth.

**The Engineering, Procurement and Construction contractor (EPC Contractor) shall provide a compilation of all user manuals, guarantees and warranties to the Project Owner and O&M Contractor including a data sheet for each item of equipment.**

**4.0. ENVIRONMENTAL CONSIDERATIONS**

**4.1. Description of Project Site and Potential Environmental Issues**

**4.1.1. Special or Sensitive Species and Habitats**

General locations where rare animals, rare plants, and significant natural communities (such as forests, wetlands, and other habitat types) are already documented in New York State. The Project Site is not located

within an area designated as having the potential for habitat for rare plants and/or endangered animals via the NYSDEC Environmental Resource Mapper Rare Plants and Animals Overlay Map (“DEC Mapper”). The Project Site does not fall within lands known or expected to be near critical habitat protected under the U.S. Fish and Wildlife Service (“USFWS”).

**4.1.2. Visual**

There will be a landscaping plan provided to mitigate the view of the solar field.

The Project Site consists of mostly vacant areas. The Property is bounded as follows:

- North: residential area
- East: heavily wooded areas
- South: heavily wooded areas
- West: densely wooded areas at project #1, as well as residential homes on project #2

See Figure 10 on the following page for the location of nearby residences and structures.

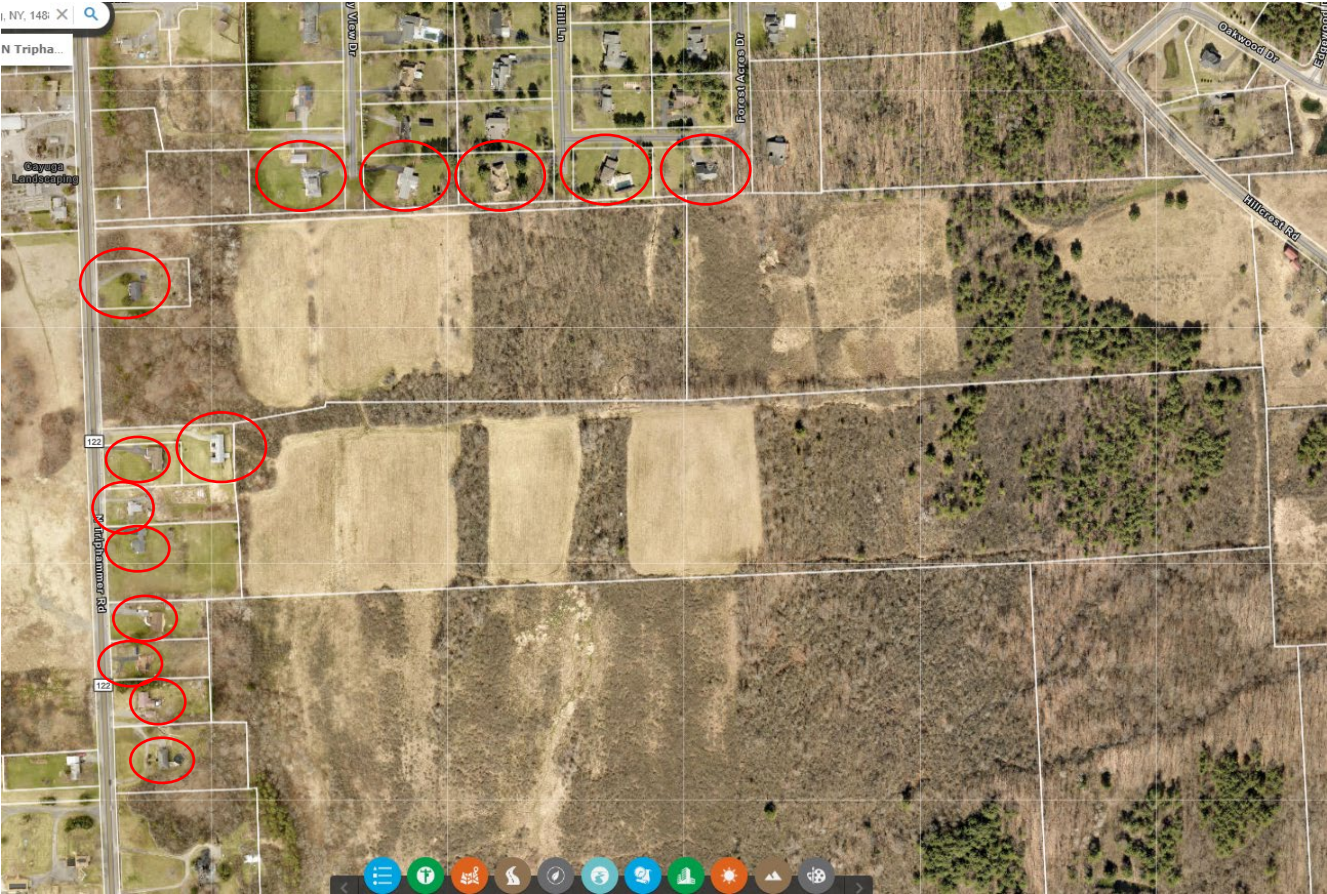




Figure 10. Nearby Residences / Buildings

### 4.1.3. Glare and Glint

Solar panels are designed to not reflect sunlight. In general, solar panels absorb as much sunlight as possible while reflecting as little light as possible. Solar panels produce less glare and reflectance than standard home window glass. Solar panels use “high-transmission, low-iron” glass, which absorbs more light, producing smaller amounts of glare and reflectance than window glass. Research has shown that they reflect less light than snow, white concrete, and energy-efficient white rooftops.

Glint is typically defined as a momentary flash of bright light, often caused by a reflection off a moving source. A typical example of glint is a momentary solar reflection from a moving car, or “catching” something bright out of the corner of your eye.

Glare is defined as a continuous source of bright light. Glare is generally associated with stationary objects, which, due to the slow relative movement of the sun, reflect sunlight for a longer duration. The difference between glint and glare is duration. Industry-standard glare analysis tools evaluate the occurrence of glare on a minute-by-minute basis; accordingly, they generally refer to solar hazards as “glare”.

The ocular impact of solar glare is quantified into three categories (Ho, 2011):

1. Green – Unproblematic shine. Low potential to cause after-image. This type of glare can be compared to noticing something shiny in the distance.
2. Yellow - Potential to cause temporary afterimage (flash blindness). This type of glare is much like sunrise and sunset glare for drivers who struggle to find the perfect angle for car visors so they can continue to operate their vehicle safely while traveling through areas of such glare.
  - a. Standard levels of yellow glare can, for the most part, be handled with relative ease utilizing slatted fencing or local foliage landscape mitigation measures.
  - b. Only extremely high levels of this type of glare (in the area of the chart labeled as “direct viewing of the sun” which is uncommon to find with PV installations) would be considered an insurmountable hurdle to a PV installation of any size.
  - c. High levels/intensities and long durations are different factors.
3. Red - Potential to cause retinal burn (permanent eye damage). PV modules do not focus reflected sunlight and therefore retinal burn (RED glare) is typically not possible.
  - d. This is the ONLY type of glare that would be considered an insurmountable hurdle to a PV installation of any size.

These categories assume a typical blink response in the observer.

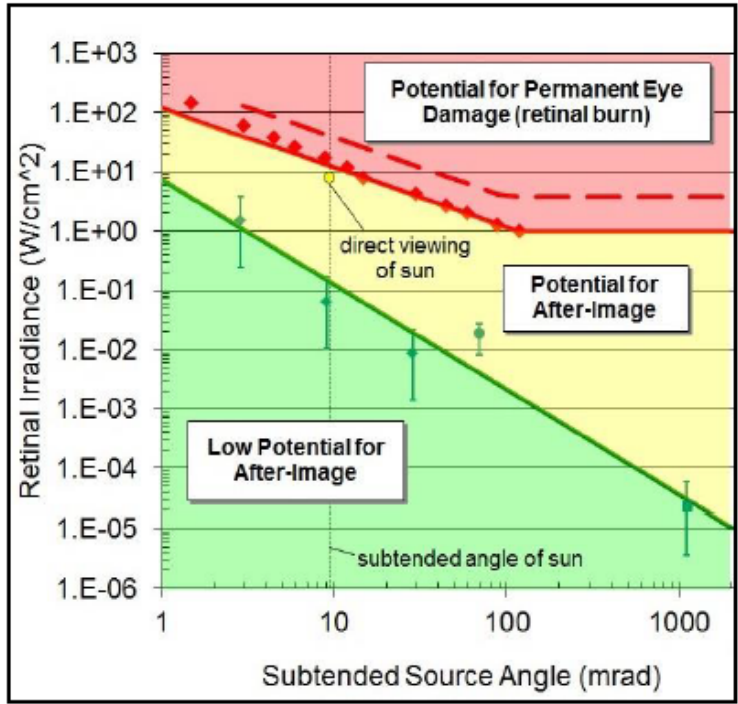


Figure 1 – From *ForgeSolar* website (sample glare hazard plot defining ocular impact as function of retinal irradiance and subtended source angle (*Ho, 2011*))

To further put glare into perspective, the following is presented.

YELLOW glare such as in the graphic below could only be seen when standing directly next to project panels at the perfect angle when the sun is in a perfect place—indeed the point of a photographer standing directly by these panels and waiting for the perfect moment to capture this image. It is also possible that the panels in the picture shown do not have an anti-reflective coating.





*Solar panel showing solar glare*

GREEN glare, as illustrated below, is the more common occurrence with solar projects—a noticeable shiny area (in the northwest area) as compared to panels where the sun is not quite in perfect alignment yet.



The effect of this noticeable shine to certain areas of the project area is still seen from a relatively close up vantage point and at the optimal height this image was captured, possibly by a drone. A similarly sized project in the distance, closer to the horizon of the photo would be unlikely to show even the levels of green glare that the system in the foreground reflects.

US patent # 6359212 (method for testing solar cell assemblies and second surface mirrors by ultraviolet reflectometry for susceptibility to ultraviolet degradation) explains the differences in the refraction and reflection of solar panel glass versus standard window glass.

When a ray of light falls on a piece of glass, some of the light is reflected from the glass surface, some of the light passes through the glass (transmitted), and some (very little) is absorbed by the glass. Following are parameters to consider when considering glare from solar panels:

- The measure of the proportion of light reflected from surface is called reflectance (reflection): R
- The measure of the proportion transmitted is the transmittance (this is where the term high light transmission glass comes from because the glass is formulated to allow more sunlight to pass through its surface than would pass through a standard glass surface): T
- The measure of the proportion absorbed is absorptance (absorption) (this amount is very small for clear glass, much smaller proportionately, than the other two components): A

Each quantity is expressed as a fraction of the total intensity (quantity) of a ray of light. Intensity may be expressed as follows:  $R + A + T = 1$ .

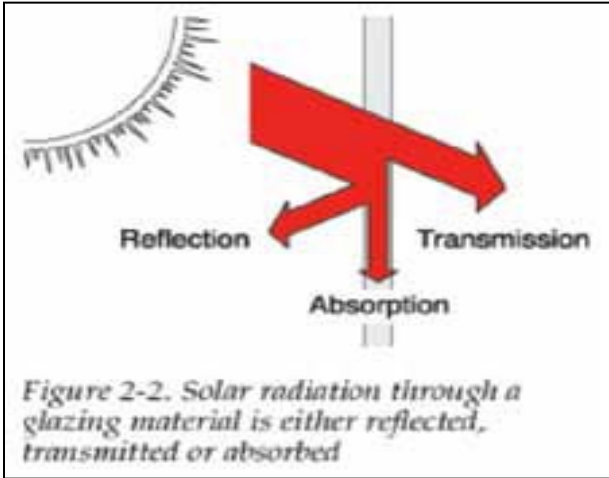


Table 6. Solar Radiation through Glazing Material

The reflection/refraction behavior of a medium is directly related to its index of refraction. Lower the index of refraction is suitable because the medium is allowing more of the incident ray to pass directly through.

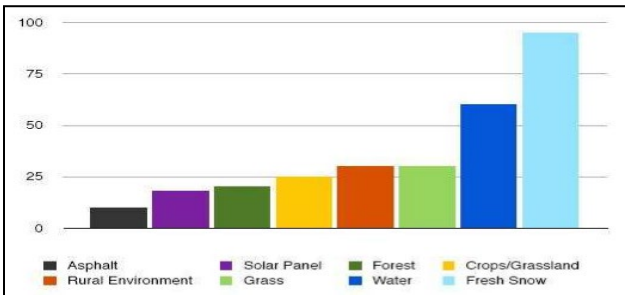




Table 7. Common Reflective Surfaces

It should be noted from the graph and the table above, that the reflected energy, in percentage, of solar glass is much lower than water and even below that of forest reflection.

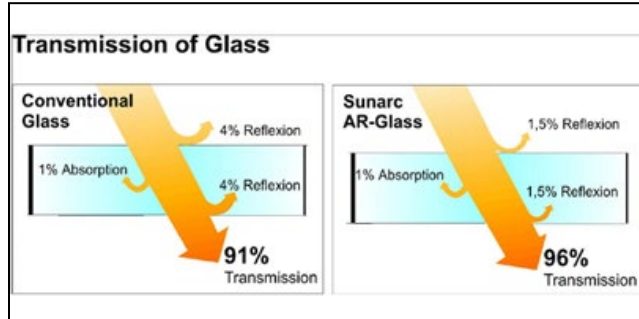


Table 8. Anti-Reflective Coating reflect a lower percentage of light than smooth water.

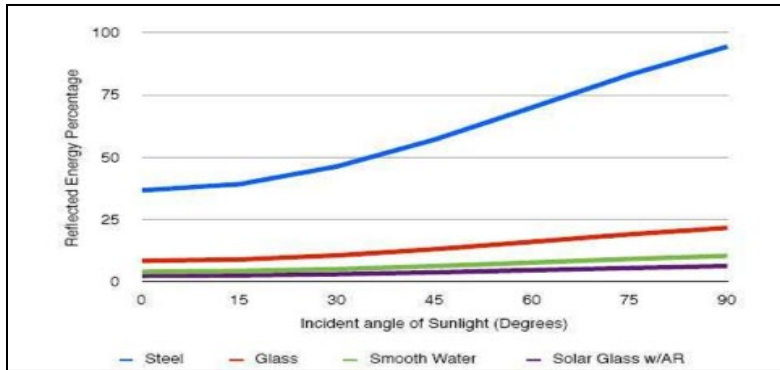


Table 9. Analysis of typical Material Reflectivity with sunlight angle (from normal).

Steel, a common building material, reflects far more incident sunlight than a solar panel.

The percentage of the incoming sunlight that is reflected is very low for high sun angles (most of the day) and increases for a very low sun angles (near sunrise and sunset when the intensity of the sun is already substantially lower than at mid-day.).

Taking into account existing vegetation and distance from the road as well as the aforementioned information regarding glare off the solar modules, roadways, buildings and flights paths will not be impacted by glare from the panels.

#### 4.1.4. Storm Water Drainage

##### 4.1.4.1 Storm Water Drainage off Modules

The storm water impacts of a solar installation will depend upon the project design, site conditions and characteristics, as well as topographic conditions. A SWPPP determines the impact, if any, of the existing runoff conditions and remediation actions, if needed, for the proposed runoff conditions. The Solar Facility

is a fixed structure mounted and is installed with minimal impact to the current topography and groundcover conditions. Also, the Solar Facility is arranged with sufficient distance between the modules to allow rainfall to infiltrate between each module and flow between arrays, allowing any runoff to naturally infiltrate and drain over all ground surfaces.

The conceptual design of the Project has been arranged, to the maximum extent practicable, to mimic natural hydrology. Rainwater falling on the modules will not channel or accumulate in large volumes as it will runoff the modules using the gap between each module, about 1 inch. Rainwater will fall off each module within a few feet of where it would naturally fall. Additionally, the site has full grass ground cover, minimizing erosive actions.



Figure 11. Module Spacing Gaps

Elements of the Solar Facility that alter natural infiltration, such as steel poles driven into the ground and any other racking components are treated as impervious. Other impervious elements would include concrete pads or foundations for racks or inverter cabinets.

The following factors have been considered during the design process:

- Runoff to flow onto and across vegetated areas to maintain the disconnection
- Disconnecting impervious surfaces works best in undisturbed soils.
- Minimizing ground disturbance.

The rows of solar panels will be installed according to Figure 12 below. In this scenario, the disconnection length is the same as the distance between rows and is at least 80% of the width of each row. Therefore, each row of modules is adequately disconnected between modules and between rows.

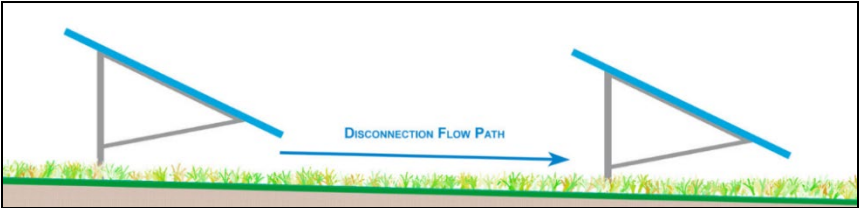


Figure 12. Array Spacing - disconnection flow path between arrays



#### 4.1.4.2 Vegetation under Modules

The modules will reduce direct sunlight under each module in direct proportion to its total collection area; this may reduce plant coverage and density under the modules. In contrast, this shading will increase the moisture of the ground providing an extra water source for vegetation.

There will be shading underneath each module (varies based on sun position and type of array layout). Within this area there will be reduced sunlight intensity. Sunlight intensity is reduced but still enough intensity remains to allow grass to persist under the shaded area. The growing pattern will be slower than the conditions associated with full open environments but good enough to allow grass to endure. Generally, the measurements made in the various light regimes indicate native grasses grows best when light values exceed 600 Lx but the growing patterns will be reduced to a level where the grass will have a thinner cover and resulting a slower growing path for the grass. Other contiguous grasses may actually benefit from some shading providing a slightly moister substrate that could be utilized by the grasses. (Source: proposed solar panels vegetation impacts, prepared by Joseph Arsenault, July 2010)

#### 4.1.5. Noise

Very minimal low-level noise is generated from the electrical inverter and distribution transformer. Inverters are tested and do not generate disturbing noise levels, and noise from equipment will not be audible at the Property boundary. Central inverters are usually surrounded by the solar panel arrays whose electricity they manage—further distancing them from anyone who might happen to be nearby. At a distance of 1m, central inverters have a sound pressure level of less than 70dB. Furthermore, because solar modules produce power only when the sun is shining, inverters will be completely silent at night.

**If trackers are proposed for the Solar Facility, the tracking racking will move slowly following the sun. This tracker movement is slow and will not create any perceptible noise.**

#### 4.1.6. Dust and Waste

The inclination of the modules allows water to flow freely through them and clean the surface when it is raining. No dust will be generated during operations. Modules after use (20 or 30 years) are 95% recyclable. The equipment will be designed for a 30-year lifespan, and end-of-life site remediation and equipment replacement options will be discussed in the Decommissioning Plan.

#### **4.1.7. Safety**

A health and safety plan will be implemented during construction. All equipment installed will comply with safety rules. Warning signs (visible, in good condition and permanent) will be posted. Perimeter fencing and surveillance system will be considered. All the equipment will be tested and in warranty. Equipment must comply with Federal, State and local regulations and applicable laws.

The electrical safety for workers will be designed and evaluated in detail. The hot parts will be isolated, and general equipment or switching devices will be mechanically interlocked. The electrical installations are equipped with protection against abnormal operating conditions, providing compliance with safety rules.

#### **4.1.8. Impacts During Construction**

It is expected that some noise will be generated during construction activities. All actions involving risk will be considered: civil engineering, machinery, transportation, etc. Impacts due to construction will be investigated, and mitigation measures will be proposed. The contingency provision for the Solar Facility consists of a detailed analysis of the possible occurrence of an incident while under construction; the purpose is to have a response to maintain the safety of people, environment, and Property.

#### **4.1.9. Cultural and Historic Resource Sites and Values**

The historic and archeological map will be utilized to identify if any cultural or historical significance exist on site. Any cultural resource that would be directly or indirectly impacted, if any, would be subject to further evaluation.

#### **4.1.10 Solar Facilities Classified as Non-Hazardous Materials**

Photovoltaic panels are designed to last more than 30 years, and many manufacturers back their products with performance guarantees backed by warranties. Many Solar Energy Industry Association (“SEIA”) members already operate take-back and recycling programs for their products. They are committed to guiding both state and federal regulations that support safe and effective collection and recycling of end-of-life modules.

End-of-life disposal of solar products in the US is governed by the Federal Resource Conservation and Recovery Act (“RCRA”) (<http://www.epa.gov/lawsregs/laws/rcra.html>), and state policies that govern waste. To be governed by RCRA, panels must be classified as hazardous waste.



To be classified as hazardous, panels must fail the Toxicity Characteristics Leach Procedure test (“TCLP Test”). Most panels pass the TCLP test, and thus are classified as nonhazardous and are not regulated. Numerous companies make available to its customers modules that do not contain toxic heavy metals (no more lead or cadmium than allowed under RoHS).

Because panel materials are enclosed, and don’t mix with water or vaporize into the air, there is little, if any, risk of chemical releases to the environment during normal use. The most common type of panel is made of tempered glass, which is quite strong. They pass hail tests.

All solar panel materials are contained in a solid matrix, insoluble and non-volatile at ambient conditions, and enclosed. Therefore, releases to the ground from leaching to the air from volatilization during use, or from panel breakage, are not a concern. Ground-mounted arrays are typically made up of panels of silicon solar cells covered by a thin layer of protective glass, which is attached to an inert solid underlying substance (or “substrate”).

The main component of most modules is silicon, which isn't intrinsically harmful, but parts of the manufacturing process do involve hazardous chemicals and these need to be carefully controlled and regulated to prevent environmental damage. It is important to note that the same materials are in other electronic goods such as computers and TVs.

Generally, companies participate in a fully funded collection and recycling system for end-of-life modules produced globally; have written a letter to SEIA urging it to support Extended Producer Responsibility (“EPR”) laws and regulations; support public EPR policies in the regions where the company manufactures and sells modules and takes responsibility for recycling by including the “crossed out garbage bin” symbol on module name plates, including a PV Cycle link on the company website; and clearly describe on the website how customers can responsibly return modules for recycling.

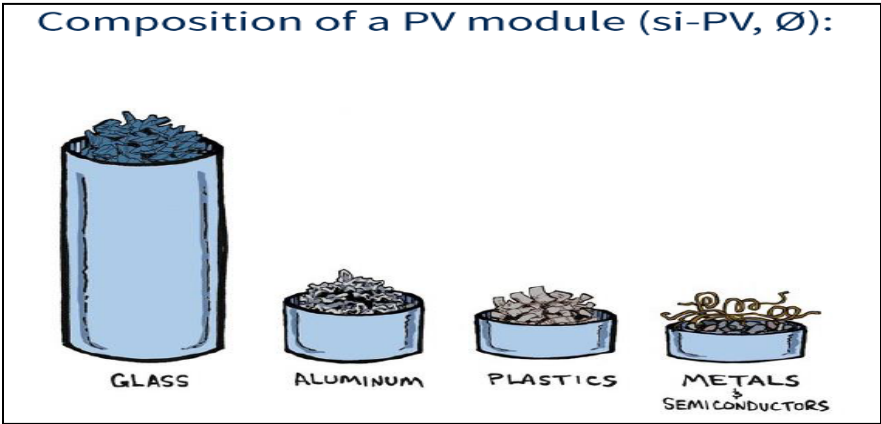


Figure 13. PV Module Composition - Source: PV Cycle

Transformers used at solar installations are similar to the ones used throughout the electricity distribution system in cities and towns. Modern transformers typically use non-toxic coolants, such as mineral oils. Potential releases from transformers using these coolants at solar installations are not expected to present a risk to human health. Release of any toxic materials from solid state inverters is also unlikely provided appropriate electrical and installation requirements are followed.

#### 4.1.11 Decommissioning Plan

The decommissioning requirement for a Solar Facility set forth in §802.18.14 of the Solar Law read as follows:

##### **Local Law #3 of 2020 Section 802.18.14**

*Abandonment and Decommissioning. A Decommissioning Plan shall be submitted with each Application in accordance with § 802.21 of this Chapter. Approval of the Decommissioning Plan by the Town Planning Board shall be required, including under Site Plan review. Removal of Solar Energy Facilities must be completed in accordance with the Decommissioning Plan. If the Solar Energy Facility is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and impose a lien on the property to cover these costs to the municipality.*

##### **Local Law #3 of 202 Section 802.21.1**

*A Decommissioning Plan shall, at a minimum, contain the following elements and meet the following requirements.*

- i. Specify when and what constitutes an event requiring decommissioning, including abandonment of the facility. In all cases the lack of production for 6 months (or for 12 of any 18 months) and the violation of any site plan conditions, the lack of a current permit or violation of permit conditions, including but not limited to maintenance of any required decommissioning bond or security, shall be an event requiring decommissioning.*
- ii. Specify the form and type of notice required to the Town in the event of any decommissioning, sale, transfer, partial transfer, assignment, or occurrence of any event which may result in an act or partial order requiring partial or complete decommissioning of the site.*
- iii. The means and methods by which utility interconnections will be removed and permitted by the utility provider, as well as all electrical and other safety precautions undertaken during removal.*
- iv. All decommissioning and restoration activities shall be completed within 150 days of the date decommissioning was ordered or required, including under the plan.*
- v. Demonstrate the removal of all Solar Panels, Battery Energy Storage Systems, wind turbines, electrical appurtenances, Towers, structures, equipment, security barriers and transmission lines.*
- vi. Demonstrate the minimization of disruption to field drains and soils, and the*



*remediation of drains and soils, including stabilization and revegetation of any sites or disturbances, including as minimize erosion. Decompaction of soils to 18 inches and removal of any installed materials to 4 feet is required. The Planning Board may allow the owner or operator to leave landscaping or designated belowgrade foundations in place to minimize erosion and disruption to vegetation in a proper case, but generally all of the New York Department of Agriculture and Markets' Guidelines for Agricultural Mitigation for Wind Power Projects or Solar Energy Projects, as applicable, shall be adhered to in any plan.*

*vii. Specify disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations, including the removal of any damaged or contaminated soils. No designation of any facilities by a 'beneficial use declaration' shall be permitted to vary this clean-up and remediation/ disposal rule.*

*viii. Include an expected timeline for execution, together with a cost estimate detailing the projected cost of executing the Decommissioning Plan, duly prepared and sealed by a Professional Engineer. Cost estimations must take inflation into account over the expected life of project, and have a mechanism to ensure the periodic updating and securitization of decommissioning costs."*

A separate "stand alone" Decommissioning Plan has been submitted to the Town as part of the application for a special use permit and site plan approval. The Decommissioning Plan is submitted separately for ease of tracking the Solar Law requirements.

The following is a summary of general Decommissioning Plan activities:

Decommissioning of the Solar Facility will include the disconnection of the Solar Facility from the Utility electrical grid and the removal of all Solar Facility components, including:

- Photovoltaic (PV) modules, module racking and supports.
- Inverter units, substation, transformers, and other electrical equipment.
- Wiring cables, perimeter fence.
- Inverter pad concrete foundations.

Generally, decommissioning of a Solar Facility proceeds in the reverse order of the installation.

1. The Solar Facility shall be disconnected from the Utility power grid.
2. PV modules shall be disconnected, collected, and disposed of at an approved solar module recycler or reused / resold on the market.
3. All aboveground and underground electrical interconnection and distribution cables shall be removed and disposed off-site at an approved facility.
4. Galvanized steel PV module support and racking system support posts shall be removed and disposed off-site at an approved facility.
5. Electrical and electronic devices, including transformers and inverters shall be removed and disposed off-site by at approved facility.
6. Concrete foundations shall be removed and disposed off-site at an approved facility.
7. Fencing shall be removed and will be disposed off-site by at an approved facility.

Site decommissioning and equipment removal can take a month or more. Therefore, access roads, fencing, electrical power, and other facilities will temporarily remain in place for use by the decommissioning workers until no longer needed. Demolition debris will be placed in a temporary onsite storage area pending final transportation and disposal and/or recycling according to procedures. No hazardous materials or waste will be used during operation of the Solar Facility; disposal of hazardous materials or waste will not be required at decommissioning.

The piling for support structures is without concrete foundation, so removing piles will not be onerous. The diameter of the holes in the ground are small in terms of impacted area and will be refilled accordingly. Excavations will be backfilled and restored with native onsite material. No significant grading or rework of the site will be performed.

Most materials of the Solar Facility have value: steel, copper, aluminum, and others. The quantity and value of recycled and reusable materials could vary according to markets value, facility conditions and lifespan.

**4.1.12. Other Environmental Considerations**

Visual resources in the Project area have been affected by past and present actions, including the construction of highways and roads, Utility lines, sewerage, water utility lines, and limited commercial and residential development, but the existing vegetation allows direct view of the solar project from nearby buildings and highways to be avoided.



# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Title No: WTA-23-012836

NY Title Ins. Lic. No.: TLA-1353623

## Commitment for Title Insurance

Issued By



755 Jefferson Road – Suite 300  
Rochester, NY 14623  
Phone: (888) 250-9056 / (585) 454-4770  
Fax: (888) 250-9057 / (585) 454-4943

[www.webtitle.us](http://www.webtitle.us)

By: \_\_\_\_\_  
**John V. Villani, Esq.**  
**Title Counsel**

**THIS REPORT IS NOT A TITLE INSURANCE POLICY!**

**PLEASE READ IT CAREFULLY. THE REPORT MAY SET FORTH EXCLUSIONS UNDER THE TITLE INSURANCE POLICY AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE PROPERTY.**

**YOU SHOULD CONSIDER THIS INFORMATION CAREFULLY.**

**Title No: WTA-23-012836**

### **AGREEMENT TO ISSUE POLICY**

WebTitle Agency (“Company”), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the Land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 180 days after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

Special Note: Please be advised that WebTitle Agency, as authorized issuing agent, utilizes title insurance rate calculators available to the general public on the internet free of charge. Please feel free to contact WebTitle Agency for a list of these website addresses.



Title No: WTA-23-012836

### CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000.00 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.

You may review a copy of the arbitration rules at: <http://www.alta.org/>.

Title No: WTA-23-012836

**COMMITMENT FOR TITLE INSURANCE  
SCHEDULE A**

- 1. Commitment Effective Date: **November 6, 2023**
- 2. Date of issuance: **December 22, 2023**
- 3. Policy (or Policies) to be issued and Proposed Insured:

Owners Policy with Leasehold Endorsement ALTA OWNERS (6-17-06):

Proposed Insured: **NY Lansing II, LLC**  
 Policy Amount: **\$116,808.41**

THIS COMMITMENT IS FURNISHED BY WEBTITLE AGENCY AS AUTHORIZED ISSUING AGENT SOLELY FOR THE ISSUANCE OF A POLICY OR POLICIES OF TITLE INSURANCE. THIS COMMITMENT IS NOT AN ABSTRACT OR AN OPINION OF TITLE. LIABILITY UNDER THIS COMMITMENT IS DEFINED BY AND LIMITED TO THE TERMS AND CONDITIONS OF THIS COMMITMENT AND THE TITLE INSURANCE POLICY TO BE ISSUED. PERSONS AND ENTITIES NOT LISTED ABOVE AS PROPOSED INSUREDS ARE NOT ENTITLED TO RELY UPON THIS COMMITMENT FOR ANY PURPOSE.

- 4. The estate or interest in the land described or referred to in this Commitment is **Leasehold**.
- 5. THIS COMPANY CERTIFIES that a good and marketable title to the premises described in Schedule A, subject to the liens, encumbrances and other matters, if any, set forth in this certificate may be conveyed and/or mortgaged by:

**Parcel A – North Triphammer Road**

**John F. Young, Susan M. Barnett, James R. Young and Julie R. Young**

Source of Title: Quit Claim Deed dated May 5, 1998 by and between County of Tompkins, Grantor, and John F. Young, Susan M. Barnett, James R. Young and Julie R. Young, Grantee, and recorded on May 11, 1998 in Liber 818, Page 292.

*Note: Above Deed also conveys Tax Lot 41.-1-28, which is not certified herein.*

**Parcel B – North Triphammer Road**

**John F. Young and Susan M. Barnett, husband and wife, as tenants by the entirety as to an undivided one-half interest, and James R. Young and Julie R. Young, husband and wife, as tenants by the entirety as to the remaining undivided one-half interest**

Source of Title: Warranty Deed dated March 30, 2001 by and between Po Family Limited Partnership, Grantor, and John F. Young and Susan M. Barnett, husband and wife, as tenants by the entirety as to an undivided one-half interest, and James R. Young and Julie R. Young, husband and wife, as tenants by the entirety as to the remaining undivided one-half interest, Grantee, and recorded on March 30, 2001 in Liber 900, Page 17.





Title No: WTA-23-012836

**COMMITMENT FOR TITLE INSURANCE  
SCHEDULE A**

6. The land referred to in this Commitment is described as follows:

**SEE SCHEDULE "A" CONTINUED ATTACHED HERETO AND MADE A PART HEREOF**

7. The land referred to in this Commitment is situated in the State of New York and is identified as follows:

**Parcel A**

Property Address:	North Triphammer Road, Lansing, NY 14882 (Town of Lansing)
County:	Tompkins
SWIS Code:	503289
Tax ID No.	44.-1-1.2
Property Type:	NON-RESIDENTIAL

**Parcel B**

Property Address:	North Triphammer Road, Lansing, NY 14882 (Town of Lansing)
County:	Tompkins
SWIS Code:	503289
Tax ID No.	44.-1-3.3
Property Type:	NON-RESIDENTIAL

# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE A

### Parcel A – North Triphammer Road, Tax Lot No. 44.-1-1.2

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Lansing, County of Tompkins, State of New York, at North Triphammer Road, being parcel number 44.-1-1.2, serial number 78 on the list of delinquent taxes for the 1997(A) Tax Foreclosure Proceedings, being approximately 23.9 acres, which parcel was formerly assessed to Elizabeth R. Biss and acquired by the County of Tompkins in the 1997(A) Tax Foreclosure Proceedings by deed recorded in the Tompkins County Clerk’s Office on April 3, 1998 in Deed Book 816 at Page 177.

### Parcel B – North Triphammer Road, Tax Lot No. 44.-1-3.3

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York, and being a part of Military Lot #95 in said Town, and more particularly bounded and described as follows:

BEGINNING at a point marked by a pin, which point is located the following four courses and distances from the intersection of the center line of North Triphammer Road with the center line of Triphammer Terrace;

1. Southerly along North Triphammer Road a chord distance of 2,398 feet, more or less, to a point in the center line of North Triphammer Road;
2. South 02 degrees 11’ 35” east 299.59 feet to a point in the center line of North Triphammer Road;
3. South 02 degrees 07’ 20” east 342.32 feet to a point in the center line of North Triphammer Road;
4. North 86 degrees 18’ 07” east, passing through a pin set in the easterly line of North Triphammer Road at 25 feet, and continuing along this course a total distance of 440.13 feet to the point or place of beginning (which point marks the northwesterly corner of Parcel B and the northeasterly corner of Parcel E as shown on the survey map hereinafter referenced);

Running thence south 02 degrees 12’ 53” east, passing through pins at 186 feet, at a further distance of 118.07 feet, for a total distance on this course of 550.07 feet to an existing pin at the southeasterly corner of premises reputedly of Milligan (643 Deeds at page 417);

Running thence north 87 degrees 17’ 07” east along the north line of premises now or formerly of Cornell University (439/452), passing through pins at 300 feet, 600 feet, 900 feet, 1,250 feet, and 1,500 feet, and continuing on this course a total distance of 3,227.40 feet to a pipe;

Running thence north 02 degrees 49’ 26” west along the west line of premises reputedly of Hillcrest Associates (643 Deeds at page 1069) a distance of 432.09 feet to a pipe;

Running thence north 03 degrees 33’ 46” west along the west line of premises reputedly of Krizek (835 Deeds at page 25) a distance of 130.14 feet to a pipe;

-continued-





Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE A

### Parcel B – North Triphammer Road, Tax Lot No. 44.-1-3.3

Running thence south 87 degrees 26' 46" west along said premises reputedly of Krizek (835 Deeds at page 25) a distance of 1,812.15 feet to a pipe;

Running thence south 87 degrees 27' 22" west a distance of 1,160.95 feet to a pin (this and the next two courses being along the southerly boundary of other premises of the grantees);

Running thence south 00 degrees 00' 22" east a distance of 16.50 feet to a pin;

Running thence south 86 degrees 18' 07" west a distance of 246.02 feet to the point or place of beginning.

The above-described premises are shown as Parcel B on a survey map entitled "Survey Map showing lands of Po Limited Partnership and Young et al., No. 2665-No. 2677 North Triphammer Road, Town of Lansing, Tompkins County, New York", prepared by T.G. Miller, P.C., Engineers and Surveyors, dated February 13, 2001.

The above-described parcel is being expressly conveyed without access (ingress or egress) to North Triphammer Road and there shall be no implied easement of access or easement of necessity over the portion of the premises being retained by the grantor for the benefit of the premises hereby conveyed (the premises being retained being shown on the T.G. Miller survey being filed concurrently herewith as Parcel C and D/E thereon).

BEING A PORTION OF PARCEL 4(A) described and conveyed in the deed from Ching Po and Liang Chun Po to Po Family Limited Partnership dated January 1, 1999 and recorded January 19, 1999 in the Tompkins County Clerk's Office in Liber 839 of Deeds at page 1.

Also being a portion of the parcel shown and designated as Parcel 2 on a certain survey map entitled "Arthur Milligan, Sr., and Viola Milligan, N. Triphammer (Mil #95), Town of Lansing, Tompkins County, New York", dated October 20, 1988, and drawn by Gary Bruce Davison, a copy of which was filed in said Clerk's Office on November 29, 1988 in Drawer L, Page 71, said Parcel 2 having been conveyed to Liang Chun Po and Ching Po (formerly) Maxim by deed dated November 23, 1988 and recorded November 29, 1988 in said Clerk's Office in Liber 642 of Deeds at page 186.

Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE B-I, REQUIREMENTS

Proposed Insured agrees to Pay and/or disburse the agreed amounts for the interest in the land to be insured and/or according to the mortgage to be insured; Pay us the premiums, fees and charges for the policy; Pay all taxes and/or assessments, levied and assessed against the land, which are due and payable.

**In addition to the above, the following requirements must be met:**

1. Any rights, interests or claims of parties in possession of the land not shown by the public records.
2. Returns, if any, of title search continuation since the effective date shown on Schedule A herein.
3. The following endorsement(s) are to be added to the final policy:

**Fee Policy: NY Standard, Leasehold Owners**

**Note: This Company should be contacted prior to closing to provide any endorsement(s) required, and to calculate the applicable endorsement charge(s).**

4. Proof of payment of taxes, tax liens, tax sales, water rates, sewer rents, user fees and assessments:

**North Triphammer Road, 44.-1-1.2**

**2023 Town and County Taxes (due 01/31/23) PAID**

**2023-24 School Taxes (due 10/01/23) PAID**

**2024 Town and County Taxes – A lien as of 01/01/24, not yet due and payable**

**North Triphammer Road, 44.-1-3.3**

**2023 Town and County Taxes (due 01/31/23) PAID**

**2023-24 School Taxes (due 10/01/23) PAID**

**2024 Town and County Taxes – A lien as of 01/01/24, not yet due and payable**

5. Mortgage(s): NONE

**Note: See Attached Mortgage Schedule Herein**

6. Proposed insured documents not provided at the time of examination.
7. Proof is required that the seller is not a party to any matrimonial action pursuant to Domestic Relations Law Section 236. Attached affidavit is to be signed at closing.
8. PLEASE NOTE: Pursuant to NYCCR 35.7, this commitment includes a notice to the borrower(s). Buyer's Counsel should have this notice signed by their client(s) as soon as possible and returned to our office. Return instructions are included on the disclosure. Thank you.



Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE B-I, REQUIREMENTS

9. The following items must be submitted to this Company following closing:

- ALL Affidavits & Forms Attached to this Commitment
- Fully Executed HUD-1 Settlement Statement
- Purchaser/Borrower Identification
- Seller Identification, if the seller is a natural person
- Payment of Fee and/or Loan Premiums
- Curatives, as required, to omit Schedule B-II items.
- Proof of payment of all real estate taxes.
- Copies of Insured Documents, if this Company is not recording the same.

Receipt of requested items are required in order to issue final policy. Copies can also be emailed to [policies@webtitle.us](mailto:policies@webtitle.us).

10. Patriot searches have been made vs. the name(s) of **John F. Young, Susan M. Barnett, James R. Young, Julie R. Young, and NY Lansing II, LLC**, and the following returns have been found:

**NONE**

11. New York Northern District Bankruptcy searches have been made vs. the name(s) of **John F. Young, Susan M. Barnett, James R. Young, Julie R. Young, and NY Lansing II, LLC** and the following returns have been found:

**NONE**

12. NY Lansing II, LLC is a Limited Liability Company and the following is required:

- a) Copy of articles of organization, proof of filing with the Department of State and payment of filing fees, and proof of publication of the formation.
- b) Copy of operating agreement must be reviewed for authorization and dissolution provisions in particular.
- c) Proof is required that the party or parties executing instruments on behalf of the LLC have authority to act.
- d) Certificate of Good Standing from the New York Department of State.
- e) Affidavit must be obtained to the effect that none of its members are dead, bankrupt, incapacitated, or dissolved nor have any members been expelled nor have withdrawn from membership.
- f) If the entity is foreign (outside of NYS), authority to do business in the State of New York is required in the form of a Certificate of Authority.

Company reserves the right to raise additional exceptions upon examination of the same.

13. The documents creating the leasehold title interest to be insured herein must be recorded prior to or at closing.

Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE B-I, REQUIREMENTS

14. This Company requires a metes and bounds legal description of the leasehold parcel and any easements for ingress and egress to the leasehold parcel, to replace the Schedule A legal description herein of the underlying fee parcel. Said description must be recited in the recorded leasehold documents.
15. If the easements for ingress and egress to the leasehold parcel burden the lands of adjoining owners, said adjoining owners must join in granting said easements.
16. The deed in Liber 818 Page 292 conveys Tax Lots 41.-1-28 and 44.-1-1.2 to John F. Young, Susan M. Barnett, James R. Young and Julie R. Young. Tax Lot 41.-1-28 is a lot of approximately 1 acre in size and adjoins Tax Lot 44.-1-1.2 to the north, but was not included in the client's title order. If said Tax Lot 41.-1-28 was intended to be included, please contact WebTitle Agency to amend this title commitment.
17. Questions about this report should be directed to John Villani at [jvillani@webtitle.us](mailto:jvillani@webtitle.us).



**Title No: WTA-23-012836****COMMITMENT FOR TITLE INSURANCE  
SCHEDULE B-II, EXCEPTIONS**

Any policy we issue will have the following exceptions, unless they are taken care of to our satisfaction:

1. Any rights, interests or claims of parties in possession of the land not shown by the public records.
2. Any rights, interest or claims affecting the land, that a correct survey would show, and an inspection of the premises would disclose.
3. No title insured to any lands lying within the bounds of any street or highway.
4. Exact acreage is not insured herein.
5. Easement granted to New York State Electric & Gas Corporation as set forth by instrument dated July 2, 1953 and recorded on August 13, 1953 in Liber 360, Page 472. (Affects tax Lot 44.-1-1.2)
6. Easement granted to New York State Electric & Gas Corporation as set forth by instrument dated May 7, 1968 and recorded on July 30, 1968 in Liber 476, Page 857. (Affects tax Lot 44.-1-1.2)
7. Easement granted to New York Telephone Company as set forth by instrument dated May 26, 1976 and recorded on June 8, 1976 in Liber 551, Page 849. (Affects Tax Lot 44.-1-1.2)
8. Right of Way and Easement granted to Town of Lansing as set forth by instrument dated September 6, 1989 and recorded on January 23, 1990 in Liber 652, Page 268. (Affects Tax Lot 44.-1-1.2)
9. Right of Way granted to New York State Electric & Gas Corporation as set forth by instrument dated October 5, 1935 and recorded on March 4, 1936 in Liber 239, Page 106 (as recited in the Deed from Knettles to Milligan, recorded September 12, 1944 in Liber 272, page 238). (Affects 44.-1-3.3)
10. Right of Way granted to Ovid Electric Company as set forth by instrument dated August 20, 1919 and recorded on May 6, 1919 in Liber 5 of Miscellaneous Records, Page 83 (as recited in the Deed from Knettles to Milligan, recorded September 12, 1944 in Liber 272, Page 238). (Affects 44.-1-3.3)
11. Easement granted to New York State Electric & Gas Corporation as set forth by instrument dated May 7, 1968 and recorded on July 30, 1968 in Liber 476, Page 861. (Affects Tax Lot 44.-1-3.3)
12. Easement granted to New York Telephone Company as set forth by instrument dated June 5, 1976 and recorded on June 8, 1976 in Liber 551, Page 852. (Affects Tax Lot 44.-1-3.3)
13. Per language in the deed in Liber 900 Page 17, access from Tax Lot 44.-1-3.3 to a public road is not insured.

**Title No: WTA-23-012836**

**COMMITMENT FOR TITLE INSURANCE  
MORTGAGE SCHEDULE**

**NONE**





Title No: WTA-23-012836

**DOMESTIC RELATIONS LAW SECTION 236 AFFIDAVIT**

**PREMISES: North Triphammer Road and North Triphammer Toad, Lansing, NY 14882**

The undersigned Buyer and/or Seller, being first duly sworn, severally depose(s) and say(s):

I am/We are this day refinancing, acquiring or selling the real estate referenced above (hereinafter, the "Premises").

That Deponent is the owner/mortgagor of real property more commonly referenced above, having taken title by Deed recorded in the County Clerk's Office.

That Deponent is not currently a party to any matrimonial action commenced on or after September 1, 2009.

This Affidavit is made for the purpose of inducing third parties to purchase and/or mortgage the real property referenced above knowing that such parties shall rely upon the truth of the above statements.

Further, this affidavit is executed to induce WebTitle Agency and its Underwriter to issue its policy of title insurance covering said premises, knowing that they will rely on the statements herein made are true.

Dated: \_\_\_\_\_

**SELLER:**

\_\_\_\_\_  
**John F. Young**

\_\_\_\_\_  
**Susan M. Barnett**

\_\_\_\_\_  
**James R. Young**

\_\_\_\_\_  
**Julie R. Young**

**STATE OF NEW YORK**

**COUNTY OF \_\_\_\_\_**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_



# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Title No: WTA-23-012836

## LLC AFFIDAVIT (Purchaser)

**PREMISES: North Triphammer Road and North Triphammer Toad, Lansing, NY 14882**

\_\_\_\_\_, ("Deponent") Member/Manager of NY Lansing II, LLC, a New York limited liability company ("Purchaser"), being duly sworn, deposes and says:

That Deponent resides in the County of \_\_\_\_\_, State of \_\_\_\_\_ and is a citizen of the United States of America; that he (she) is over the age of twenty-one years, and is a member and/or manager of \_\_\_\_\_, a duly created limited liability company, organized and existing under and by virtue of the Laws of the State of New York, with its principal office located at \_\_\_\_\_, New York, and that Deponents, as such member/manager, is duly authorized to make this affidavit.

That the articles of organization of \_\_\_\_\_ were duly published for six (6) consecutive weeks in \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_ and proof thereof was duly filed in the office of the New York Secretary of State and that Purchaser is now in good standing thereunder. That the articles of organization have not been modified since its formation, and that as member/manager I have authorization to execute closing documents for real estate transactions.

That I am the sole member/manager of said LLC and no other person or entity has any ownership interest in (or claim against any member's interest in) said LLC. Other members, if any, are stated here: \_\_\_\_\_.

That none of its members are dead, bankrupt, incapacitated, or dissolved nor have any members been expelled nor have withdrawn from membership.

That there are no judgments, injunctions, decrees, attachments, or orders of any court for the payment of money against said LLC or to which it is a party, unsatisfied or not cancelled of record in any of the federal or state courts of the United States of America or any suit or proceeding pending anywhere affecting the Property.

That no case or proceeding in bankruptcy has ever been instituted by or against said LLC or any of its members in any federal or state court of the United States of America nor has said LLC at any time made an assignment for the benefit of creditors. No filing in bankruptcy is contemplated by said LLC.

That no statement of fact has been omitted by Deponent(s) from this affidavit which would make this affidavit misleading or incorrect, or which, with the mere passage of time, would make this affidavit misleading or incorrect. This affidavit is intended to be relied on by induce WebTitle Agency and its Underwriter to issue a policy of insurance covering the above stated premises.

\_\_\_\_\_  
Member/Manager

**STATE OF NEW YORK**

**COUNTY OF \_\_\_\_\_**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_





# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Title No: WTA-23-012836

## INDIVIDUAL SELLER(S) AFFIDAVIT

**PREMISES: North Triphammer Road and North Triphammer Toad, Lansing, NY 14882**

**John F. Young, Susan M. Barnett, James R. Young and Julie R. Young**, ("Deponent") being duly sworn, deposes and says:

1. I am / We are this day selling the above referenced premises.
2. I / We have not been known by any other name except: \_\_\_\_\_
3. That there is not any other contract to sell the Property or any part thereof nor granted any option or right of first refusal to any person or entity with respect to the Property. That there are no existing licenses, leases, oral or written, recorded or unrecorded, affecting the Property or any part thereof.
4. That there are no tenants at the premises.
5. Any fence(s), driveway(s), shed(s), deck(s), retaining wall(s), garage(s), swimming pool(s) and any other improvement(s) (hereinafter "Improvement") are located wholly within the perimeter of the property.
  - a. No demand has been made to remove any Improvement;
  - b. No Improvement has been intended to establish the boundary lines between the property and the adjoining properties;
  - c. No one else has claimed title to the property within the surveyed boundary lines;
  - d. No dispute exists with adjoining owners as to the ownership or location of any Improvement.
6. The property have continuously occupied openly and notoriously, exclusively, under claim of rightful ownership, adversely to any other claims for my / our entire ownership, and to the best of my / our knowledge for more than twenty (20) consecutive years, during which period the title has not been disputed and the possession of the property has been peaceable and undisturbed.
7. That all sewer or water rents, charges, meter charges or other utility charges or assessments have been or will be paid or discharged fully by as of the date of closing (unless otherwise agreed to with the Buyer by possession agreement or by closing adjustment credit to the Buyer at closing) with respect to the Property.
8. That no work has been performed upon or with respect to the Property within the past eight (8) months that could ripen into a mechanic's lien and that there are no outstanding liens or violations which have ripened to liens, against the Property or any part thereof, whether or not such liens or violations are reflected in the records of the County Clerk in said County.
9. That there are no judgments, injunctions, decrees, attachments, or orders of any court for the payment of money against me / us, unsatisfied or not cancelled of record in any of the federal or state courts of the United States of America or any suit or proceeding pending anywhere affecting the Property.
10. That no case or proceeding in bankruptcy has ever been instituted by or against me /us in any federal or state court of the United States of America nor has an assignment been made for the benefit of creditors.



Title No: WTA-23-012836

**INDIVIDUAL SELLER(S) AFFIDAVIT**

I hereby give this undertaking and indemnity to WebTitle Agency, Inc. and their Underwriter to issue its Title Policy. I realize they will rely on the truth of the statements herein contained.

\_\_\_\_\_  
**John F. Young**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**Susan M. Barnett**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**James R. Young**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**Julie R. Young**

**Dated:** \_\_\_\_\_

**STATE OF NEW YORK**

**COUNTY OF** \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_





Title No: WTA-23-012836

## MEMORANDUM OF TITLE FEES

**THIS IS NOT AN INVOICE. DO NOT PAY FROM THIS MEMORANDUM.**

New York State Insurance Law Section 2119 (f) & 35.6 (a) requires that we provide you with, and that you sign, this memorandum that specifies the cost of any ancillary services that we provide together with the title insurance premium being charged.

PROPERTY ADDRESS: North Triphammer Road and North Triphammer Toad, Lansing, NY 14882

<u>Seller Charge</u>	<u>Amount</u>		<u>Buyer / Borrower Charge</u>	<u>Amount</u>
Fee Premium		X	Fee Premium	\$688.00
Fee Endorsements			Fee Endorsements	
Loan Premium			Loan Premium	
Loan Endorsements			Loan Endorsements	
Land Records Search & Examination of Title		X	Land Records Search	\$900.00
Additional Work Charges, FC Abstract			Survey Locate and/or Inspection	
Bankruptcy, Tax and Patriot Searches			Bankruptcy, Tax and Patriot Searches	
Judgment & Lien Search			Judgment & Lien Search	
UCC Search			UCC Search	
Document Copies		X	Document Copies	\$88.00
Continuation Search & Examination			Continuation Search & Examination	
Departmental (Municipal) Searches			Departmental (Municipal) Searches	
ACRIS Preparation			ACRIS Preparation	
Overnight / Courier Fees			Overnight / Courier Fees	
Recording Service Fee			Recording Service Fee	
Abstract Locate Fee			Abstract Locate Fee	
Abstract Redate Fee			Abstract Redate Fee	
40 Year Abstract			40 Year Abstract	
Tax Escrow - Payoff Fee			Tax Escrow - Payoff Fee	
Franchise Tax Report				
<b>TOTAL</b>	<b>\$0.00</b>		<b>TOTAL</b>	<b>\$1,626.00</b>

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NY Lansing II, LLC



Title No: WTA-23-012836

## NOTICES

All of the recording information contained herein refers to the Public Records of the County shown on Schedule A herein, unless otherwise indicated. Any reference herein to a Book and Page is a reference to the Official Record Books of said county, unless indicated to the contrary.

All notices required to be given and any statement in writing required to be furnished by the Company or to the Company shall include the number of this policy.

WebTitle Agency cares about its customers and their ability to obtain information and service on a convenient, timely and accurate basis. A qualified staff of service representatives is dedicated to serving you. A toll-free number is available for your convenience in obtaining information about coverage and to provide assistance in resolving complaints at 1-866-932-6322. Office hours are from 8:00 a.m. through 5:00 p.m. Monday through Friday.



# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Title No: WTA-23-012836

## PRIVACY POLICY

### **We Are Committed to Safeguarding Customer Information**

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our Underwriter, we have adopted this Privacy Policy to govern the use and handling of your personal information.

### **Applicability**

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity.

### **Types of Information**

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or other means.
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

### **Use of Information**

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

### **Former Customers**

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

### **Confidentiality and Security**

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.



NY Lansing II, LLC  
33 Lower Main Street / PO Box 384  
Callicoon, NY 12723

Section 3, Item d.

April 9, 2024

Town of Lansing Building Department  
29 Auburn Road  
Lansing, New York 14882

Attn: Code Enforcement Officer  
C/O Scott Russell

Re: North Triphammer Road, South Parcel Project #2 - Solar Energy Facility

Dear CEO Russell,

The purpose of this letter is to request for the above reference application for a Use variance for NY Lansing I, LLC – Solar Energy Facility Project (“Project”) to be placed on the May 8<sup>th</sup> Zoning Board meeting agenda.

The site plan application materials are written specific to this project on parcel 44.-1-3.3 and a portion of 44-1-1.2 for the access road, and any zoning requirements listed in the code as required by the Town Solar Law.

Please be advised the Project Summary, Operation and Maintenance Plan and the Decommissioning Plan are draft documents that will need review and possible revision. The submission of those three documents are presented with both projects together as much of the information is the same for both projects. As we move through the review process, if you would like us to separate these documents for each project we will accommodate that request.

Included in this submission are the following items, per the Town website portal directives.

- The Project Cover Page and Project Summary or Narrative
- The Boundary Survey, T.G. Miller PC has been contracted to work on a lot line adjustment for these two parcels. A proposed survey will be presented to the Town in a future submission.
- The Memo of Lease provided to show written permission of the Property Owner
- Photos of the site have been provided from the Site Assessment Study.
- The deed has been provided.
- The title commitment letter has been provided showing easements and / or Covenants.
- A letter from HodgsonRuss has been provided as a response to the balancing questions and the Public Use Standard for determining variances.
- The Long EAF has been provided

In addition to those items requested please also review the additional attachments uploaded to the permit portal.

- The proposed Site Plan Set
- The Operations and Maintenance Plan
- The Draft Decommissioning Plan

Respectfully Submitted,



Mollie Messenger

Encs.  
Rich Winter, Chief Executive Officer





Draft #: 1 Date: 4/8/2024

Approved Date: \_\_\_\_\_

# **Operations & Maintenance Plan**

---

## **North Triphammer Road**

### **Project #1 and #2**

**Project #1 - SBL: #144-1-1.2 5MW Solar Facility**

**Project #2 - SBL#: 44-1-3.3 3MW Solar Facility**

Prepared for:

**Town of Lansing**

**Tompkins County, New York**

Prepared by:  
NY Lansing I, LLC & NY Lansing II, LLC  
P.O. Box 384  
Callicoon NY, 12783

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## 1. Introduction

#1: NY Lansing I, LLC & #2: NY Lansing II, LLC (“Project Owner”), an affiliate of Delaware River Solar, LLC, proposes to build a photovoltaic (PV) solar facility (“Solar Facility”) at North Triphammer Road in the Town of Lansing (“Town”) under New York State’s Community Solar initiative. The Solar Facility is planned to have a nameplate capacity of approximately 5MW ac (MW) from Project #1 and 3MW ac from Project #2, to be constructed on private land (“Project Site”) leased by the Project Owner from the property owner (“Property Owner”).

This Operations and Maintenance Plan (“Plan”) is being submitted to the Town as part of the application with respect to the Town of Lansing Local Law #3 of 2020 802.18 (“Solar Law”). The Solar Facility is considered a Solar Energy Facility as set forth in the Solar Law.

Prior to commercial operation, the Project Owner will enter an Operation and Maintenance Contract (“O&M Contract”) with an operations and maintenance provider(s) (“O&M Contractor”), the scope of which shall include essential works and services needed for the (a) proper operation and maintenance of the Solar Facility and (b) maintenance of the Project Site. The following is a general overview of the O&M Plan to be covered in the O&M Contract.

## 2. General Requirements of the O&M Plan

- All scheduled Solar Facility maintenance and all landscaping and vegetation maintenance will occur during normal business hours (8:00 A.M. and 7:00 P.M. Eastern Standard Time).
- Commercially reasonable efforts will be used to ensure minimal limits of disturbance when performing any maintenance work of the Solar Facility or Project Site.
- The Project Owner will not use herbicides to manage vegetation. In the event the use of herbicides becomes necessary, the Project Owner will provide the Town’s Code Official with the proposed herbicide type, manufacturer and application details for approval before any application is made.
- In the event there is any damage to ground cover, vegetation or vegetative screening due to maintenance activities (other than caused by normal maintenance activities), the affected areas and vegetation will be repaired.
- Corrective maintenance of the Solar Facility may require specialists outside the abilities and responsibility of the Project Owner.

## 3. Solar Facility (Components) Maintenance

### 3.1 Scheduled Service Visits: Preventative Maintenance and Inspections

- Semi-Annual interim maintenance visit
- Annual full maintenance visit
- System testing and verification of data acquisition systems, at least once per calendar year
- Module cleaning once a year, or as determined by Project Owner
- Solar Facility field inspection: visual, electrical and mechanical once per month, or as determined by Project Owner
- Data acquisition system maintenance as needed
- Inverter cleaning and servicing to ensure proper operation. Scheduled maintenance and testing as required to maintain manufacturer’s warranties.
- Scheduled maintenance and testing required to maintain all manufacturers’ warranties on Solar Facility components.

### **3.2 Unscheduled Service Visits: Corrective Maintenance and Repairs**

Unscheduled maintenance visits will generally occur during “Emergency Situations” that would endanger the health and/or safety of surrounding area or “Major Disruptions” to the Solar Facility that degrades electricity generation that does not create an Emergency Situation, such as failure of Solar Facility components, vandalism, or fallen trees.

In the event of an Emergency Situation, the O&M Contractor and/or the Project Owner will contact the appropriate personnel (fire department, police department) to inform them of the emergency. The O&M Contractor will then dispatch appropriate personnel to the Project Site as soon as possible.

In the event of a Major Disruption to the Solar Facility, the O&M Contractor will schedule a corrective maintenance visit as soon as possible with all reasonable effort to schedule any such maintenance activities between 8:00 A.M and 7:00 P.M.

### **3.3 O&M Contract**

The scope of the O&M Contract shall include essential works and services needed for the proper operation and maintenance of the Solar Facility. The scope of work shall generally include at least, but not limited to, the following items:

- Compliance with the Local, State and Federal Rules, Codes, Regulations and Laws regarding the health and safety of any operation and maintenance works.
- Performance of a preventive and corrective maintenance plan.
- Control and monitoring of the Solar Facility 24/365, including, CCTV alarms and system failures, and coordination with the local fire department and law enforcement.
- Maintain and operate all the infrastructures, equipment and facilities related to the Solar Facility required for the proper operation.
- Provide reports to Project Owner (monthly and yearly) of any major unexpected event.
- Administer and manage supplier's guarantees and warranties.
- Management the paperwork involved with third party site visits such as insurance, governmental agencies and others related.
- On site annual peak power and degradation performance testing of modules to a representative sample of modules.
- Annual IR thermography field test of modules and connections of the electrical panels. The test will be done in the appropriate weather conditions taking into account that the main purpose is to detect hot spot events.
- Spare parts stock management, including all cost associated like insurance, security or transportation.

### **3.4 Preventative and Corrective Maintenance Plan**

The O&M Contractor shall comply with the preventive and corrective maintenance programs to maintain and operate the Solar Facility in the proper way. These actions shall include:

- Inspect, test, and clean equipment, including a periodically cleaning of the modules.
- Replace all spare parts, supplies and consumables necessary for performance of the O&M Contract according to the Preventive and Corrective Maintenance Program and the manufacturer's user manual.
- Perform annual field tests and fix any potential failures that arise due to the test.
- Provide Project Owner a monthly report including at least the following information: energy estimate, energy production, % of availability, weather station information, preventive maintenance services performed, corrective maintenance services performed including spare parts and consumables used. Monthly report should also include a detailed description of:



1. Any material failure covered by any warranties, action plan and expected timeframe to cover the incident.
  2. Any violation of any applicable law, applicable permit or prudent industry practice due to the O&M practices, including environmental laws, rules, or regulations enforced by governmental agencies.
  3. Any adverse events or conditions that may affect normal Solar Facility operation.
  4. Record of all tests and reviews performed to maintain systems in compliance with the manufacturer user manual, including name of company involved and nature of service.
- Guaranties and warranties of the manufacturers that arise, including without limitation any claims or remedies against any subcontractors or suppliers; and
  - Comply with all permits and maintain in effect all permits required for operation and maintenance of the Solar Facility.

#### **4. General Project Site Maintenance**

Frequency of site visits shall be determined based on season (more in summer, less in winter), but no less than quarterly to monitor vegetation. Any required corrective actions will be taken as soon as practical or warranted by the circumstances.

- Visually inspect and report on all fencing for signs of damage, intrusion, and overgrowth of vegetation.
- Inspect signage to ensure all originally installed signs are present and legible.
- Maintenance of access road, including snow removal as needed.
- Vegetation may need to be trimmed or cut back to avoid shading of the solar arrays. Shading inspections will be done semi-annually, and trimming will occur as needed. This would include ground cover, existing vegetation, and screening vegetation. Ground cover will be either mowed, as needed, or sheep may be utilized to graze the array area.
- Adherence to any Storm Water Pollution Prevention Plan practices, if any.

#### **5. Summary**

This O&M Plan has been submitted as part of the Site Plan review and Special Condition for a Solar Energy Facility as set forth in Local Law #3 of 2020; Section 802.18.

The Solar Facility is considered a Solar Energy Facility as defined in the Solar Law. The Project Owner will enter into an O&M Contract prior to commercial operation of the Solar Facility with an O&M Contractor taking into consideration any conditions of Local Law #3 of 2020; Section 802.18.

# BLUSTEIN, SHAPIRO, FRANK & BARONE LLP

Section 3, Item d.

ATTORNEYS AT LAW

MICHAEL S. BLUSTEIN  
RICHARD J. SHAPIRO ♦  
GARDINER S. BARONE  
WILLIAM A. FRANK  
JAY R. MYROW  
DIANA PUGLISI  
MEGAN R. CONROY  
WILLIAM E. DUQUETTE, JR.\*  
BARBARA A. GARIGLIANO

449 BROADWAY  
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JEANINE GARRITANO WADESON  
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STEPHANIE T. MIDLER\*  
SUSIE C. SOHN^  
LYNN A. PISCOPO  
BURT J. BLUSTEIN  
1940 - 2022  
ARTHUR SHAPIRO  
RETIRED  
RITA G. RICH  
RETIRED

Please Reply to Monticello Office

ALSO ADMITTED IN PA\*  
ALSO ADMITTED IN NJ^  
ALSO ADMITTED IN MA\*

September 5, 2023

Town of Neversink Zoning Board of Appeals  
Town of Neversink Town Hall  
273 Main Street  
Grahamsville, New York 12740

Re: Proposed Solar Energy Facility near Hastings Drive

To: Members of the Zoning Board of Appeals:

Our firm represents NY Neversink I, LLC ("NY Neversink I") in connection with its efforts to develop a 3.9-megawatt ("MW") AC solar energy facility ("Project") on two parcels of land near Hastings Drive in the Town of Neversink, New York ("Town"). One parcel upon which the Project is proposed is a portion of the Property owned by The Ceresnak Legacy Trust and John Ceresnak ("Ceresnak") and depicted on the Town tax map as SBL 18.-1-9.1. The second parcel upon which the Project is proposed is a portion of the property owned by Hastings Realty Holding, LLC ("Hastings Realty") and depicted on the Town tax map as SBL 26.-1-6.1. This letter is in support of two area variance applications ("Applications") submitted to the Town Zoning Board of Appeals ("ZBA") allowing the Project to deviate from the required side yard requirements provided in Town Zoning Law ("Zoning Law"). Specifically, this letter addresses the standard applicable to public utilities in New York.

The Zoning Law requires large-scale solar energy systems (defined as "Equipment that directly converts and then transfers or stores solar energy into usable forms of thermal or electrical energy. For the purposes of this chapter, a large solar energy system shall have a surface area of greater than 4,000 square feet.") be setback from property lines by at least 25 feet. Zoning Law §50-8 Schedule of District Regulations. The Project will be located on both the Ceresnak and Hastings Realty properties. Both properties will be leased to NY Neversink I. The operations term of both leases will be identical. The yard setback in the Zoning Law is intended to allow separation distance between potentially incompatible uses. Here the proposed Project is a single use proposed to be located on adjoining properties. As such, both Ceresnak and Hastings Realty seek an area variance so the Project can be most efficiently designed and construed. Because solar



energy facilities are public utilities for zoning and land use purposes, the Applications must be reviewed pursuant to the variance standard applicable to public utilities, rather than the traditional five-factor area variance test under N.Y. Town Law §267-b(3).

To minimize any potential unintended impacts, both property owners expect as a condition of the approval, the area variances only apply to the use of the properties as a solar energy facility, as the variance if granted should speak directly to the use of the property and not the owner or lessee. This would preserve the purpose behind the requirement for setbacks between parcels, should either property at any time be converted to another use. The ZBA has authority to impose reasonable conditions on a grant of a variance applicable to the use of the property. *St. Onge v. Donovan*, 71 N.Y.2d 507, 515–16 (1988) (quoting *Matter of Pearson v. Shoemaker*, 25 Misc.2d 591, 592 (Sup. Ct. 1960) (“A zoning board may, where appropriate, impose ‘reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property’, and aimed at minimizing the adverse impact to an area that might result from the grant of a variance or special permit.”)).

**The Applications must be reviewed pursuant to the variance standard applicable to public utilities.**

The New York Court of Appeals (“Court of Appeals”) in *Consolidated Edison Co. of New York, Inc. v. Hoffman*, 43 N.Y.2d 598 (1978) (“*Hoffman*”) held that public utilities are subject to an alternative standard when seeking a variance. The *Hoffman* case involved the proposed addition of a 565-foot wet cooling tower at the Indian Point nuclear plant operated by Consolidated Edison (“Con Ed”) to mitigate the negative environmental impacts on the Hudson River from its prior cooling system. After Con Ed’s building permit application was denied on the grounds that the tower exceeded the 40-foot building height limit in the zoning district and would result in prohibited uses, Con Ed sought a variance from the Village of Buchanan Zoning Board of Appeals (“Buchanan ZBA”). The Buchanan ZBA denied the application, finding that Con Ed had not shown any practical difficulties requiring the variance, had not demonstrated it was the minimal variance necessary, and failed to adequately consider alternatives.

This denial was challenged and made its way to the Court of Appeals. The Court of Appeals determined that although the traditional approach is to require an applicant for a variance to demonstrate an unnecessary hardship, such showing is “not appropriate where a public utility such as Con Edison seeks a variance, since the land may be usable for a purpose consistent with the zoning law, the uniqueness may be the result merely of the peculiar needs of the utility, and some impact on the neighborhood is likely.” *Hoffman*, 43 N.Y.2d at 607. Instead, utilities can demonstrate entitlement to a variance by showing that the proposed “modification is a public necessity ... required to render safe and adequate service[.]” *Id.* at 610 (internal citations omitted). And, “where the intrusion or burden on the community is minimal” the Court of Appeals determined that the requisite showing “should be correspondingly reduced.” *Id.*

Since the *Hoffman* case, application of the alternative standard for public utility uses in the context of local land use approvals has been expanded given the more inclusive definition of a

public utility developed by the Court of Appeals in *Cellular Tel. Co. v. Rosenberg*, 82 N.Y.2d 364 (1993) (“*Rosenberg*”). There, the Court of Appeals defined “public utility” as:

“‘a private business, often a monopoly, which provides services so essential to the public interest as to enjoy certain privileges such as eminent domain and be subject to such governmental regulation as fixing of rates, and standards of service.’ Characteristics of the public utility include (1) the essential nature of the services offered which must be taken into account when regulations seek to limit expansion of facilities which provide the services, (2) ‘operat[ion] under a franchise, subject to some measure of public regulation,’ and (3) logistic problems, such as the fact that ‘[t]he product of the utility must be piped, wired, or otherwise served to each user \* \* \*[,] the supply must be maintained at a constant level to meet minute-by-minute need[, and] [t]he user has no alternative source [and] the supplier commonly has no alternative means of delivery.’”

*Rosenberg*, 82 N.Y.2d 371 (internal citations omitted).

This much broader definition has resulted in application of the variance standard articulated in *Hoffman* to siting facilities, rather than just modifications or expansions to existing facilities, and to less “traditional” public utilities such as cellular telephone companies and renewable energy projects. See *Rosenberg*, 82 N.Y.2d 372 (The *Hoffman* case “applies to entirely new siting of facilities, as well as the modification of existing facilities.”). Based on the reasoning in this line of cases, New York courts have annulled variance denials for renewable energy projects based on Town Law § 267-b, and remanded such applications to local ZBA’s for review under the public utility variance standard. See *Delaware River Solar, LLC, et al. v. Town of Aurora Zoning Bd. of Appeals*, Index No. 808123/2022 (Sup. Ct. Erie Cty. Nov. 7, 2022); see also *Cipriani Energy Grp. Corp. v. Zoning Bd. of Appeals of the Town of Minetto, New York et al.*, EFC-2022-0043 (Sup. Ct. Oswego Cty. Apr. 12, 2022) (“[*Rosenberg*] directly applies to this situation and compels the determination as a matter of law that NY Neversink I [a solar developer] is a public utility.”); *Freepoint Solar LLC and FPS Potic Solar LLC v. Town of Athens Zoning Bd. of Appeals*, EF2021-795 (Sup. Ct. Greene Cty. Aug. 18, 2022) (vacated local ZBA’s denial of a variance under Town Law § 267-b for failing to apply the variance test under *Hoffman*). Zoning Boards of Appeal have also applied the public utility variance standard to variance applications submitted for solar energy facilities as a matter of course. See *Town of Binghamton Zoning Bd. of Appeals Decision*, dated June 14, 2022 (applying the public utility variance standard to a community solar developer and granting a variance); see *Town of Oswego Zoning Bd. Of Appeals Resolution*, dated Jan. 19, 2023 (“the Applicant ... further addressed the applicable variance criteria the Courts of this State have applied to renewable energy projects ... declaring such projects to be public utilities and thus reviewable under the less-restrictive *Hoffman* standard of review, which was recently applied by the New York State Supreme Court in a legal proceeding involving the neighboring Town of Minetto ... the Project is a public utility and thus is afforded the standard of review for a [] variance articulated in *Hoffman*[] ... By its very nature, clean energy is a public necessity as proclaimed by the State of New York in its Clean Energy Standard and further codified in the Climate Leadership and Community Protection Act[.]”). These decisions mentioned above are enclosed with this letter of support.



This Project meets each one of the *Rosenberg* factors. Firstly, the Project will be owned by NY Neversink I, an affiliate of Delaware River Solar, LLC (“DRS”)—a private solar energy company which operates to provide clean, renewable electricity to the grid for consumers. Further, it cannot be argued that electricity is not essential to our everyday life. As former U.S. Secretary of Energy Hazel O’Leary said, “[e]lectricity is just another commodity in the same way that oxygen is just another gas.”<sup>1</sup> Second, the Project will be subject to “regulation and supervision” by the Public Service Commission (“PSC”) because it will generate electricity. See *W. Beekmantown Neighborhood Ass’n, Inc. v. Zoning Bd. of Appeals of Town of Beekmantown*, 53 A.D.3d 954, 956 (3d Dep’t 2008) (citing N.Y. PUB. SERV. LAW §§ 2(2–b), (12), (23); § 5(1)(b); § 66–c). The Project will be an integral part of the electricity generation and transmission system, generating clean, renewable energy and distributing it to consumers through the electric grid—a utility in its own right, subject to significant public regulation. And even though the more modern utility model has decoupled generation and transmission in this way, companies that generate electricity for sale to consumers through the State’s transmission system are still treated as public utilities. Specifically, as a community solar development, installation and operation of the Project will be subject to the provisions of the PSC’s “New York State Standardized Interconnection Requirements and Application Process for New Distributed Generators and Energy Storage Systems 5MW or Less Connected in Parallel with Utility Distribution Systems.” See N.Y. PUB. SERV. COMM’N, Case 15-E-0082.

Additionally, the product—electricity—can only be distributed by way of the electric grid. There is no other feasible method for an electricity generator to deliver electricity to consumers. Both the generator and the consumer are beholden to the transmission system to send and receive electricity service, and because of the ever-present demand for power, adequate supply must be maintained at all times.

Further, there are significant logistical constraints in siting solar projects. Most properties in a municipality are not economically feasible for solar development. The size and layout of a project site must be at such a scale to accommodate the project, which often cannot be reduced to fit a smaller property or a single property given that solar projects are only economically feasible at a certain size. The property must also be located near existing utility infrastructure—namely, transmission/distribution lines and a substation—in order to interconnect the project to the utility grid. Without these crucial pieces, a solar project simply could not go forward. The Ceresnak property has no practical means to connect to the electric grid other than being used for the Project which will interconnect to the electric line, which is located on a right-of-way running along the Hastings Realty property. Installation of solar panels is significantly more expensive on certain challenging terrain (*e.g.*, excessive wetlands and steep slopes). And access to sunlight at the site as it exists, without having to modify it at exponential cost, is similarly crucial. Lastly, community solar sites are often leased, making it challenging to find a willing property owner.

Here, the property was carefully selected to meet the needs of a community solar project. In this case, DRS began its search for an adequate project site by evaluating the capacity of the Central-Hudson Gas and Electric Corp. (“Central Hudson”) Substation network. Once it was

<sup>1</sup> Quoted in Ralph Cavanagh, “Restructuring for Sustainability: Toward New Electric Service Industries,” *Electricity Journal* (July 1996): 71.

confirmed that Central Hudson’s 13.2kV Feeder 3091 connected to Central Hudson’s Neversink substation (located on Route 42 in Grahamsville) had excess capacity, DRS inquired about leasing land in the area for the purpose of a community solar facility. Very few parcels were identified, which were then further analyzed to determine if they met certain criteria tied to lot size, slopes, and the presence of wetlands, waterbodies, extensive old-growth-tree coverage and distance to a point of interconnection (“POI”) and distance to the substation. DRS reviewed the topography, slope, and elevation data; the New York State Department of Environmental Conservation (“NYSDEC”) and the U.S. Fish & Wildlife Service National Wetlands Inventory (“NWI”) data to identify any mapped wetlands; applied the Zoning Law requirements to the identified parcels to determine useable acreage; evaluated expected substation and feeder capacity; and assessed any substation upgrades that would be required by the Project. This extensive analysis revealed building the Project on these two properties was the best option to site the Project.

Moreover, the two properties are comprised of land, which provides sufficient area to build and maintain a large-scale solar energy facility without material viewshed impact. The Hastings Realty property is near the POI (*i.e.*, where the Project physically connects to the Central Hudson distribution power line)—a necessary piece of the puzzle where NY Neversink I will connect the Project to the grid in order to transmit the power to consumers. This proximity to the POI allows NY Neversink I to interconnect to the grid directly from the project site, without intruding on any neighboring properties. Central Hudson has verified that both the feeder and substation have enough available capacity to accommodate a project of this size. Finding suitable land with available interconnection capacity is often the most challenging aspect of sitting solar energy systems, since capacity is scarce and the costs to interconnect a solar project can be prohibitive. In the case of this Project, these criteria were met.

This unique combination of locating the Project on two properties provides an opportunity to build an economically feasible solar energy facility. The sole reason that the area variances are needed is that the Solar Law requires large-scale solar energy facilities to be setback 25 feet from boundaries. The most efficient layout of the Project requires no setback from the common property boundaries.<sup>2</sup>

The Project is a public utility use, and a request for variances for the Project is reviewed under the variance standard articulated in *Hoffman*.<sup>3</sup> This only requires a showing that the Project is a public necessity, needed to provide safe and adequate service. As stated above, electricity generation is undeniably a necessity. There is a public necessity for the Project, which will provide extensive public benefits: (a) the development of the Project will generate local, county, and school

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<sup>2</sup> Both property owners have consented to the grant of the variances and there are no other parties of interest.

<sup>3</sup> Courts that have considered the question have determined that a renewable energy project is a public utility. See *W. Beekmantown Neighborhood Ass’n, Inc. v. Zoning Bd. of Appeals of Town of Beekmantown*, 53 A.D.3d 954, 956 (3d Dep’t 2008) (where the Third Department upheld the ZBA’s determination that wind turbines were a “public utility” under the zoning law); see also *Wind Power Ethics Group (WPEG) v. Zoning Bd. of Appeals of Town of Cape Vincent*, 60 A.D.3d 1282, 1283 (4th Dep’t 2009) (where the Fourth Department upheld the ZBA’s classification of a series of wind-powered generators as a utility within the meaning of the zoning law which defined a utility as “telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities.”).



tax revenue (directly or through a payment in lieu of taxation agreement) while not increasing demand on Town infrastructure; (b) energy generated from the Project will be distributed to the NY ISO Central Hudson electrical grid and will directly benefit utility customers (residential and/or small businesses) enrolled in the “community solar program” via a discount; and (c) residential customers will have the option to source solar energy which they may not have the capital to generate on their own.

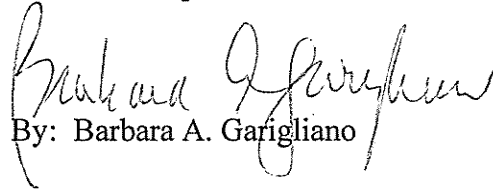
Further, as noted in *Hoffman*, where there is little to no burden on the community, the requisite showing from the utility is correspondingly reduced. The Project will not present any significant burden on the community, but will instead be a safe, quiet, clean generator of electricity. The Project is proposed to be sited in a remote area, surrounded by forest land. The Project will be bordered on all sides by a significant forested buffer limiting the view of the Project from surrounding properties. The leased portion of each property is presently undeveloped. Thus, NY Neversink I is seeking to convert unused land to an economically beneficial site with zero emissions, fumes, or odors, no traffic impacts, and little to no noise above background levels.

The Project actually presents *net benefits* to the community. As noted above, because the Applicant is proposing a community solar project, residents and local businesses can access the electricity generated from the Project at a lower cost. They would receive electricity from the transmission utility (*i.e.*, Central Hudson) in the same manner as they do now, but with a discount—and the added benefit of knowing it is being generated from a renewable source in their own Town. The solar posts are pile driven or screwed in place, creating minimal disturbance during installation. The racking system that holds the solar panels is elevated off the ground, leaving the area under and between the solar arrays as grassland or meadow ecosystems, planted with pollinator species to benefit a host of wildlife. Soils on site will not be materially disturbed but will instead be left fallow to build organics and other important soil components over time. Disturbance to the land that would need to be restored upon decommissioning is generally limited to removal of the panels along with their racking and posts, and any installed concrete pads for inverters or other similar equipment. The access road will be removed to the extent located on the Ceresnak property. And, pursuant to the terms of the lease, the landowner has the option to terminate the Project after its initial useful life. At such time, NY Neversink I, the Project Operator, must decommission the Project, remove all components, and restore the land to a future use deemed acceptable by the landowner and Town. This decommissioning work will be ensured by a security instrument held by the Town, in an amount deemed acceptable to the Town.

Given the facts presented above, NY Neversink I respectfully requests that the ZBA find the Project to be a public utility use and grant the area variances allowing the Project to deviate from the required yard requirements discussed above, as it meets the variance standard for public utilities under New York law.

We thank you for your consideration of this letter and request. If you have any questions or concerns, please do not hesitate to contact me at (845) 796-1010 or my colleague Michael Blustein, Esq. at (845) 291-0011.

Very truly yours,  
Blustein, Shapiro, Frank & Barone, LLP



By: Barbara A. Garigliano

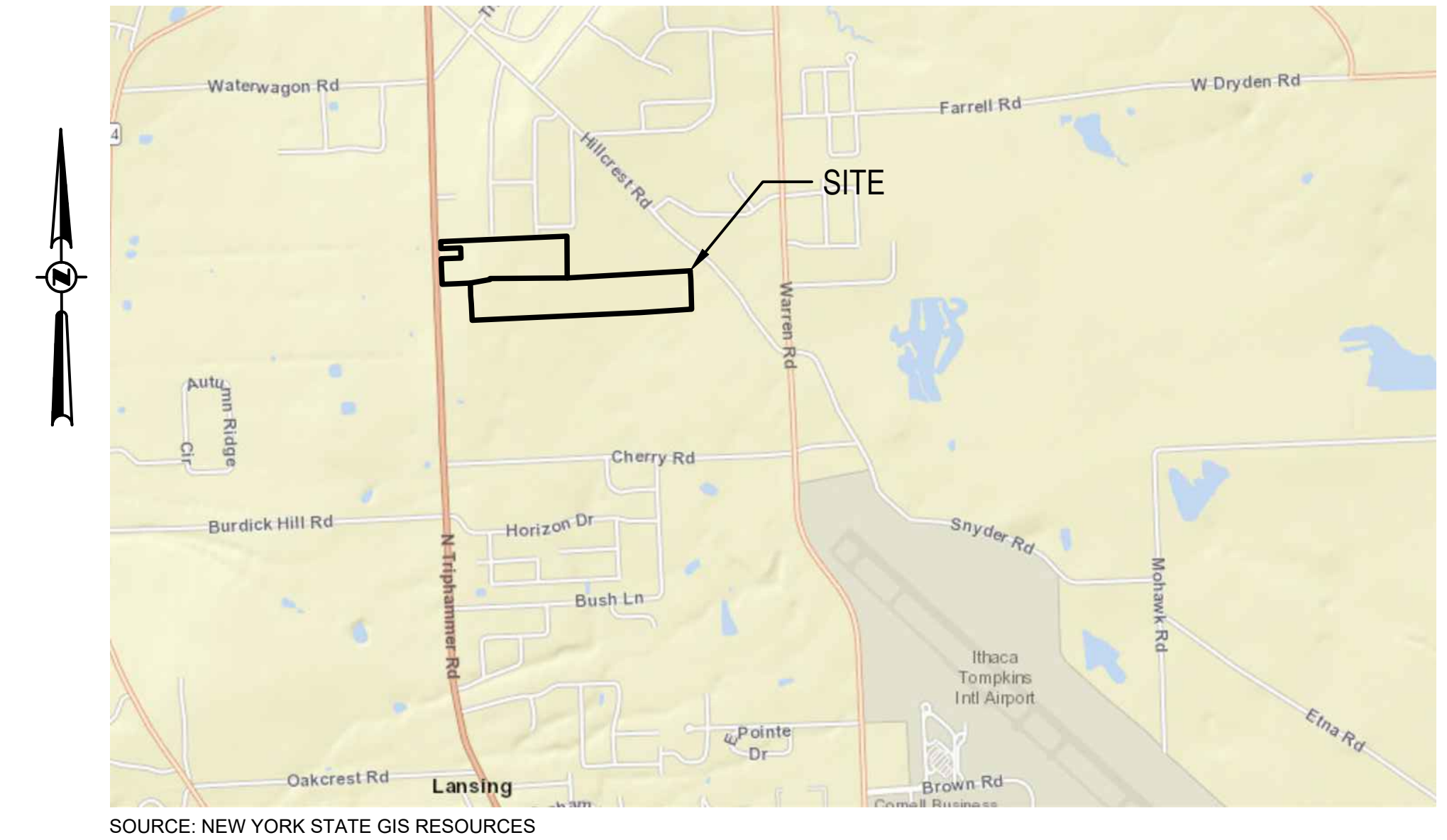
BAG/sj  
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- cc: Keith Stryker, Code Enforcement Officer, Town of Neversink *Via Email*
- Kenneth C. Klein, Esq., Town Attorney, Town of Neversink *Via Email*
- Richard Winter, Chief Executive Officer, Delaware River Solar, LLC *Via Email*
- Henry Anreder, Project Developer, Delaware River Solar, LLC *Via Email*
- Usman Chaudhry, P.W. Grosser Consulting, Inc. *Via Email*



# NY LANSING II, LLC

## NORTH TRIPHAMMER ROAD SOLAR PROJECT 3.0 MW AC LANSING, NEW YORK



SOURCE: NEW YORK STATE GIS RESOURCES

VICINITY MAP  
SCALE: 1"=2000'  
0 2000 4000  
SCALE: 1" = 2000'

### PLANS

ISSUED FOR: CLIENT REVIEW  
ISSUE DATE: 04/05/2024  
LAST REVISED: 04/05/2024

### PROJECT CONTACTS

ENGINEER:  
P.W. GROSSER CONSULTING, INC.  
630 JOHNSON AVENUE, SUITE 7, BOHEMIA, NY 11716  
TEL: (631) 589-6353  
FAX: (631) 589-8705

### MUNICIPAL CONTACTS

TOWN:  
TOWN OF LANSING  
26 AUBURN ROAD  
LANSING, NY 14882  
TEL (607) 533-4142

COUNTY:  
TOMPKINS COUNTY  
320 N TIOGA STREET  
ITHACA, NY 14850  
TEL (607) 274-5431

### SITE INFORMATION

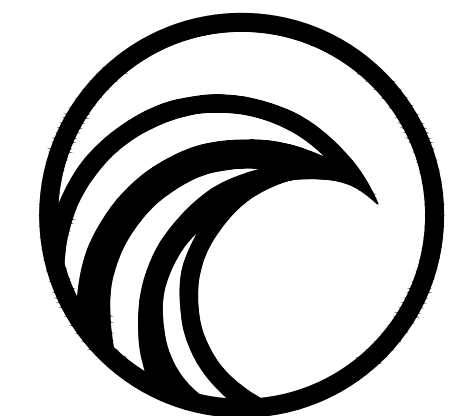
SITE: NORTH TRIPHAMMER ROAD, LANSING NY, 14882  
TM #: 44-1-1.2 & 44-1-3.3  
LOT AREA: 66.83 AC

### SHEET INDEX

NO.	SHEET	TITLE
1.	COVER	
2.	C-001	GENERAL NOTES AND LEGEND INFORMATION
3.	C-100	EXISTING CONDITIONS PLAN
4.	C-101	CONCEPTUAL SITE LAYOUT PLAN
5.	C-200	CONCEPTUAL GRADING AND DRAINAGE PLAN
6.	C-201	CONCEPTUAL EROSION AND SED. CONTROL PLAN
7.	C-500	CONCEPTUAL LANDSCAPING PLAN
8.	C-501	PRIME SOILS IMPACT MAP
9.	C-600	SITE DETAILS
10.	C-601	EROSION AND SED. CONTROL DETAILS
11.	C-602	ELECTRICAL THREE LINE DIAGRAM

### CLIENT INFORMATION

CLIENT:  
NY LANSING II, LLC  
P.O. BOX 384  
CALLICOON, NY 12783



# PWGC

CLIENT DRIVEN SOLUTIONS

P.W. GROSSER CONSULTING, INC.

630 Johnson Avenue • Suite 7  
Bohemia • NY • 11716-2618  
Phone: (631) 589-6353 • Fax: (631) 589-8705  
E-mail: INFO@PWGROSSER.COM

**COVER**  
SHEET 1 OF 11

**FOR PERMITTING PURPOSES ONLY  
NOT FOR CONSTRUCTION**



## BASEMAP NOTES

- EXISTING CONDITIONS BASEMAP INFORMATION IS BASED ON LIDAR FROM NYS GIS DATA DOWNLOADED ON 04-01-24.
- PROPOSED SOLAR DEVELOPMENT LAYOUT INFORMATION IS BASED ON CONCEPTUAL LAYOUT PLAN DEVELOPED BY MONGAUP RIVER SOLAR, SHEET TITLED "LAYOUT TECHNICAL REVIEW" AT 1":250' SCALE, DATED 03-26-24. ALL BASEMAP INFORMATION IS TO BE CONSIDERED APPROXIMATE AND IS TO BE FIELD VERIFIED BY A NEW YORK STATE LICENSED SURVEYOR PRIOR TO FINALIZING DESIGN.
- LOT LINES BASED ON INFORMATION PROVIDED FROM NYS GIS; DOWNLOADED ON 04-01-24.

## SURVEY NOTES

- ALL SURVEY AND SITE STAKEOUTS FOR PROPOSED FEATURES SHALL BE PERFORMED BY A NEW YORK STATE LICENSED SURVEYOR.
- CONTRACTOR WILL BE RESPONSIBLE TO LOCATE, MARK AND PROTECT ALL EXISTING SURVEY, PROPERTY, AND RIGHT-OF-WAY MARKERS FOR THE SITE. ANY MARKERS, PINS, MONUMENTS OR OTHER FEATURES DEFINING PROPERTY LIMITS THAT MAY BE DISTURBED BY CONSTRUCTION ACTIVITIES SHALL BE PROPERLY TIED AND RESET BY A NEW YORK STATE LICENSED SURVEYOR UPON COMPLETION OF THE WORK.
- THE HORIZONTAL DATUM IS NAD83 NEW YORK STATE PLANE COORDINATE SYSTEM, (US FT).
- THE VERTICAL DATUM IS NAVD88.

## GENERAL NOTES

- THE INFORMATION IN THIS DRAWING SET IS CONCEPTUAL AND IS INTENDED FOR TOWN BOARD PLANNING AND DISCUSSION PURPOSES ONLY. THIS DRAWING SET IS NOT TO BE USED FOR CONSTRUCTION OR BIDDING PURPOSES.
- CONTRACTOR WILL BE RESPONSIBLE TO FIELD VERIFY ALL EXISTING CONDITIONS AND SITE FEATURES PRIOR TO CONSTRUCTION. ANY DISCREPANCIES FOUND SHALL BE DOCUMENTED IN WRITING AND SUBMITTED TO THE ENGINEER FOR REVIEW PRIOR TO CONSTRUCTION.
- CONTRACTOR WILL BE RESPONSIBLE TO LOCATE AND MARK OUT ALL EXISTING UTILITIES, INCLUDING THOSE UNDERGROUND, PRIOR TO CONSTRUCTION. ANY POTENTIAL INTERFERENCES WITH PROPOSED FEATURES SHALL BE DOCUMENTED IN WRITING AND SUBMITTED TO THE ENGINEER FOR REVIEW PRIOR TO CONSTRUCTION.
- THE CONTRACTOR SHALL PROTECT ALL EXISTING SITE FEATURES AND UTILITIES THAT ARE NOT DESIGNATED FOR REMOVAL. ANY SITE FEATURE, UTILITY, STREET APPURTENANCE, OR OTHER ITEM THIS IS DAMAGED BY THE CONTRACTOR OR ITS SUBCONTRACTORS DURING CONSTRUCTION SHALL BE REPAIRED OR REPLACED IN-KIND BY THE CONTRACTOR, AS DETERMINED BY THE OWNER OR ENGINEER, AT NO ADDITIONAL COST TO THE OWNER.
- CONTRACTOR WILL BE REQUIRED TO OBTAIN ANY ADDITIONAL PERMITS REQUIRED TO DO THE WORK OR DELIVER MATERIALS TO THE SITE THAT ARE NOT PROVIDED BY THE OWNER OR ENGINEER. ALL WORK WITHIN AN EXISTING RIGHT-OF-WAY WILL REQUIRE PERMITTING WITH RESPECTIVE OWNER, STATE OR COUNTY AGENCY, TOWN DEPARTMENT OF PUBLIC WORKS, OR HIGHWAY DEPARTMENT AS APPLICABLE.

## ZONING ANALYSIS

TM #: 44-1-1.2 & 44-1-3.3  
 EXISTING ZONING: RESIDENTIAL - MODERATE DENSITY (R2)  
 LOT AREA: 66.83 ACRES  
 PROPOSED USE: SOLAR ENERGY FACILITY

	REQUIRED	PROPOSED
LOT SIZE	N/A	66.83 AC.
MAX. LOT COVERAGE	25%	9.4%
MAX. HEIGHT	18'	15'
PROPERTY SETBACK (FRONT & ROAD)	60'	814.3'
PROPERTY SETBACK (SIDE)	10'	118.2'
PROPERTY SETBACK (BACK)	25'	127.4'

## EROSION AND SEDIMENT CONTROL NOTES

- ALL EROSION CONTROL MEASURES SHALL BE INSTALLED IN ACCORDANCE WITH NEW YORK STANDARDS AND SPECIFICATIONS FOR EROSION AND SEDIMENT CONTROL (BLUE BOOK), AND LOCAL GOVERNING SOIL AND WATER CONSERVATION DISTRICT STANDARDS. THE EROSION AND SEDIMENT CONTROLS SHOWN ON THESE PLANS AND AS DESCRIBED IN THE PROJECT SWPPP REPRESENT THE MINIMUM REQUIREMENTS AND ADDITIONAL EROSION AND SEDIMENT CONTROLS MAY BE REQUIRED BASED ON CONDITIONS ENCOUNTERED IN THE FIELD. CONTRACTOR WILL BE RESPONSIBLE FOR ENSURING PROJECT REMAINS IN COMPLIANCE WITH ALL APPLICABLE REGULATIONS AND STANDARDS PERTAINING TO EROSION AND SEDIMENT CONTROLS.
- EROSION AND SEDIMENT CONTROLS WILL BE INSTALLED PRIOR TO ANY EARTH DISTURBING ACTIVITIES AND WILL BE MAINTAINED FOR THE DURATION OF THE WORK, INCLUDING TEMPORARY CONSTRUCTION SWALES AND DETENTION POND WITH OUTLET STRUCTURE AND ROCK OUTLET PROTECTION.
- CONTRACTOR WILL UTILIZE MEANS, METHODS AND SEQUENCING THAT MINIMIZE THE AMOUNT OF EARTH DISTURBANCE TO THE EXTENT PRACTICAL, AND NOT TO EXCEED MORE THAN 5.0 ACRES AT ANY GIVEN TIME.
- CONTRACTOR SHALL PROTECT ALL ON-SITE, ADJACENT AND/OR DOWNSTREAM STORM/SANITARY SEWERS, AND/OR OTHER WATER COURSES FROM CONTAMINATION BY WATER BORNE SILTS, SEDIMENTS, FUELS, SOLVENTS, LUBRICANTS OR OTHER POLLUTANTS ORIGINATING FROM THE SITE OR WORK BEING PERFORMED.
- CONTRACTOR WILL FOLLOW GOOD HOUSEKEEPING AND SPILL CONTROL PRACTICES DURING SITE ACTIVITIES TO MINIMIZE STORMWATER CONTAMINATION FROM CONCRETE, PETROLEUM PRODUCTS AND WASTE MATERIALS. NO WET OR FRESH CONCRETE, LEACHATE OR WASHINGS FROM EQUIPMENT SHALL BE ALLOWED TO MIGRATE INTO EXISTING STORM/SANITARY SEWERS, DITCHES OR OTHER WATERS OF NEW YORK STATE.
- ALL EXCAVATED OR IMPORTED MATERIAL STOCKPILES SHALL BE SUITABLY STABILIZED AND SURROUNDED BY SILT FENCE TO MINIMIZE POTENTIAL FOR SEDIMENT LADEN RUNOFF DISCHARGING TO DOWNSTREAM AREAS OR DRAINAGE FEATURES. DISTURBED SOILS OR STOCKPILES THAT ARE TO BE EXPOSED FOR MORE THAN 14 CALENDAR DAYS SHALL BE TEMPORARILY STABILIZED WITH SEED MIX CONSISTING OF RYEGRASS (ANNUAL OR PERENNIAL) APPLIED AT 30 LBS PER ACRES (0.7 LBS PER 1,000 SQ. FT.), OR CERTIFIED "AROOSTOOK" WINTER RYE (CEREAL RYE) APPLIED AT 100 LBS PER ACRES (2.5 LBS PER 1,000 SQ. FT.) IF SEEDING IN OCTOBER OR NOVEMBER.
- CONTRACTOR MATERIAL AND EQUIPMENT STAGING AREAS AND CONSTRUCTION ENTRANCE LOCATIONS SHALL BE COORDINATED WITH THE OWNER PRIOR TO START OF CONSTRUCTION. CONSTRUCTION ENTRANCES AS SHOWN ON THE PLANS MAY BE MODIFIED BY THE CONTRACTOR WITH PRIOR APPROVAL FROM THE OWNER AND ENGINEER.
- ALL EXISTING OR NEWLY INSTALLED CATCH BASINS/DRAINAGE INLETS SHALL HAVE DROP INLET PROTECTION INSTALLED THROUGHOUT THE DURATION OF CONSTRUCTION TO PREVENT SEDIMENTATION FROM ENTERING THE STORM SYSTEM. CONTRACTOR SHALL MAINTAIN OR REPLACE DROP INLET PROTECTION WHEN SIGNIFICANT SEDIMENT BUILDUP IS OBSERVED OR IS NOT FUNCTIONING CORRECTLY.
- CONTRACTOR SHALL TAKE ALL NECESSARY AND APPROPRIATE MEASURES TO MITIGATE OR PREVENT FUGITIVE DUST THROUGHOUT THE DURATION OF CONSTRUCTION. CONTRACTOR SHALL ADHERE TO METHODS AS DESCRIBED IN THE PROJECT SWPPP.
- COMPLETED WORK THAT IS NOT SUBJECT TO FURTHER EARTHWORK OR CONSTRUCTION ACTIVITIES SHALL BE PERMANENTLY SEEDED AND MULCHED WITH HAY OR STRAW WITHIN ONE WEEK OF FINAL DISTURBANCE. MULCH SHALL BE MAINTAINED UNTIL A SUITABLE VEGETATIVE COVER IS ESTABLISHED.

## GRADING NOTES

- CONCEPTUAL GRADING DESIGN SHOWN IN THESE PLANS IS BASED ON NYS LIDAR INFORMATION PROVIDED TO PWGC BY PACKER ASSOCIATES, INC. AND IS TO BE CONSIDERED APPROXIMATE AND CONCEPTUAL, AND FOR DISCUSSION PURPOSES ONLY. GRADING DESIGN IS SUBJECT TO CHANGE BASED ON FURTHER SITE INVESTIGATIONS AND ANALYSIS.
- ADDITIONAL SITE GEOTECHNICAL ANALYSIS IS REQUIRED TO VERIFY GRADING CONSTRAINTS AND FEASIBILITY.
- GRADING SHALL PERFORMED IN ACCORDANCE WITH ALL APPLICABLE STATE AND OSHA REQUIREMENTS. THE CONTRACTOR SHALL CONFORM TO THE REQUIREMENTS OF OSHA, AND ANY OTHER AGENCY HAVING JURISDICTION WITH REGARD TO SAFETY PRECAUTIONS WITH TRENCHING OR EXCAVATION AND GRADING OPERATIONS. THE REQUIREMENTS SET FORTH HEREIN ARE INTENDED TO SUPPLEMENT REQUIREMENTS ESTABLISHED BY THESE AGENCIES. IN THE CASE OF A CONFLICT BETWEEN REQUIREMENTS OF OTHER JURISDICTIONAL AGENCIES AND THESE DOCUMENTS, THE MORE STRINGENT REQUIREMENT ON THE CONTRACTOR SHALL APPLY.
- VOIDS LEFT BY UTILITY OR STRUCTURE EXCAVATIONS, OR GRUBBING OPERATIONS SHALL BE BACKFILLED AND PROPERLY COMPACTED WITH STRUCTURAL FILL (NYS DOT ITEM 304.12 OR EQUIVALENT) IN AREAS UNDER AND WITHIN 5 FEET HORIZONTALLY OF ALL STRUCTURES, AND PAVEMENTS. IN GRASSED AREAS, VOIDS LEFT SHALL BE FILLED AND PROPERLY COMPACTED WITH SUITABLE ON-SITE BACKFILL AS APPROVED BY THE ENGINEER.
- THE CONTRACTOR SHALL DEWATER ALL EXCAVATIONS TO PREVENT THE INTRODUCTION OF GROUNDWATER OR PONDED WATER INTO THE TRENCHES/EXCAVATIONS AND WILL PROVIDE ALL EQUIPMENT NECESSARY TO MAINTAIN THE WATER AS NECESSARY. DEWATERING SHALL BE PERFORMED IN ACCORDANCE WITH THE PROJECT SWPPP.
- UNLESS OTHERWISE DIRECTED, THE CONTRACTOR SHALL PLACE AT MINIMUM 6 INCHES OF CLEAN TOPSOIL IN ALL DISTURBED AND NEWLY GRADED AREAS PRIOR TO SEEDING.

## WETLANDS NOTES

- EXISTING STREAM AND WETLANDS INFORMATION IS BASED ON DEC ENVIRONMENTAL RESOURCE MAPPER PUBLICLY AVAILABLE DATA DOWNLOADED ON 04-01-24.
- ACTUAL LIMITS OF ALL STREAMS, WETLANDS AND WETLAND ADJACENT AREAS ARE TO BE FIELD VERIFIED VIA SURVEY AND WILL BE MARKED IN THE FIELD BY SURVEY MARKERS, RIBBON, FLAGS, OR EQUIVALENT PRIOR TO START OF CONSTRUCTION.
- EFFORTS SHALL BE MADE TO MINIMIZE DISTURBANCE TO ANY STATE OR FEDERALLY REGULATED WETLANDS. UNNECESSARY REMOVAL OF VEGETATION OR DEGRADATION ALONG STREAM BANKS IS PROHIBITED.
- IF TEMPORARY ACCESS IS REQUIRED IN WETLAND AREAS, TEMPORARY TIMBER MATS WILL BE USED TO MINIMIZE DISTURBANCE TO UNDERLYING WETLAND SOILS.
- STAGING OF ANY CONSTRUCTION MATERIALS OR EQUIPMENT IS PROHIBITED IN WETLAND AREAS.
- ANY WETLAND DISTURBANCE IS TO BE RESTORED WITH APPROPRIATE WETLAND SEED MIX IN ACCORDANCE WITH NYS DOT ITEM 203.01920007 OR MOST CURRENT NYSDEC REQUIREMENTS RELATED TO WETLAND RESTORATION. COMPONENT OF THE SEED MIX MAY BE SUBSTITUTED WITH THE ENGINEER'S APPROVAL.

## LEGEND

EXISTING	CONCEPTUAL	NOTES
<b>TOPOGRAPHIC FEATURES</b>		
		MINOR CONTOURS (5-FT INTERVAL)
		MAJOR CONTOURS (10-FT INTERVAL)
		LIMITS OF GRADING
<b>DRAINAGE ELEMENTS</b>		
		STREAM
		WATER BAR
		LINED SWALE
		ROCK OUTLET PROTECTION
		DRAINAGE CULVERT
		DETENTION POND OUTLET STRUCTURE
		STORMWATER DETENTION POND
<b>SITE FEATURES</b>		
		PROPERTY BOUNDARY
		ZONING SETBACK
		APPROXIMATE WETLAND LIMITS
		POTENTIAL WETLAND LIMITS
		ADJACENT PROPERTY BOUNDARY
		APPROXIMATE WETLANDS OFFSET
		PAVED ROADWAY
		GRAVEL ROADWAY
		OVERHEAD ELECTRICAL UTILITY
		UNDERGROUND ELECTRICAL UTILITY
		8-FT TALL DEER FENCE
		SOLAR PANEL ARRAY
		SEED RESTORATION LIMITS
		TREE LINE
<b>EROSION AND SEDIMENT CONTROL</b>		
		SILT FENCE
		LAND GRADING ACTIVITIES
		STABILIZED CONSTRUCTION ENTRANCE
		DUST CONTROL MEASURES
		LIMITS OF CLEARING

FOR PERMITTING PURPOSES ONLY NOT FOR CONSTRUCTION

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1	CLIENT REVIEW	04/05/2024
Number	Revision Description	Revision Date
Designed By		Date Submitted
Drawn By	HLW	Date Created 03/28/2024
Approved By	MTS	Scale AS NOTED

Client:  
**NY LANSING II, LLC**  
 P.O. BOX 384  
 CALLICOON, NY 12783

Project:  
**NORTH TRIPHAMMER ROAD SOLAR FARM CONCEPTUAL SITE PLAN**

Project Address:  
**NORTH TRIPHAMMER ROAD**  
**TOWN OF LANSING**  
**TOMPKINS COUNTY, NEW YORK**

County Tax Map Number: 44-1-1.2 & 44-1-3.3  
 Regulatory Reference Number: ---

## GENERAL NOTES AND LEGEND INFORMATION

Drawing Number: **C-001**

Sheet **2** of **11**

PWGC Project Number: **DRS2404**

STATE OF NEW YORK  
 MICHAEL SCARFONE  
 LICENSED PROFESSIONAL ENGINEER  
 103321

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1	CLIENT REVIEW	04/05/2024
Number	Revision Description	Revision Date
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Drawn By	HLW	Date Created 03/28/2024
Approved By	MTS	Scale 1" = 150'

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 CALLICOON, NY 12783

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 Regulatory Reference Number: ...

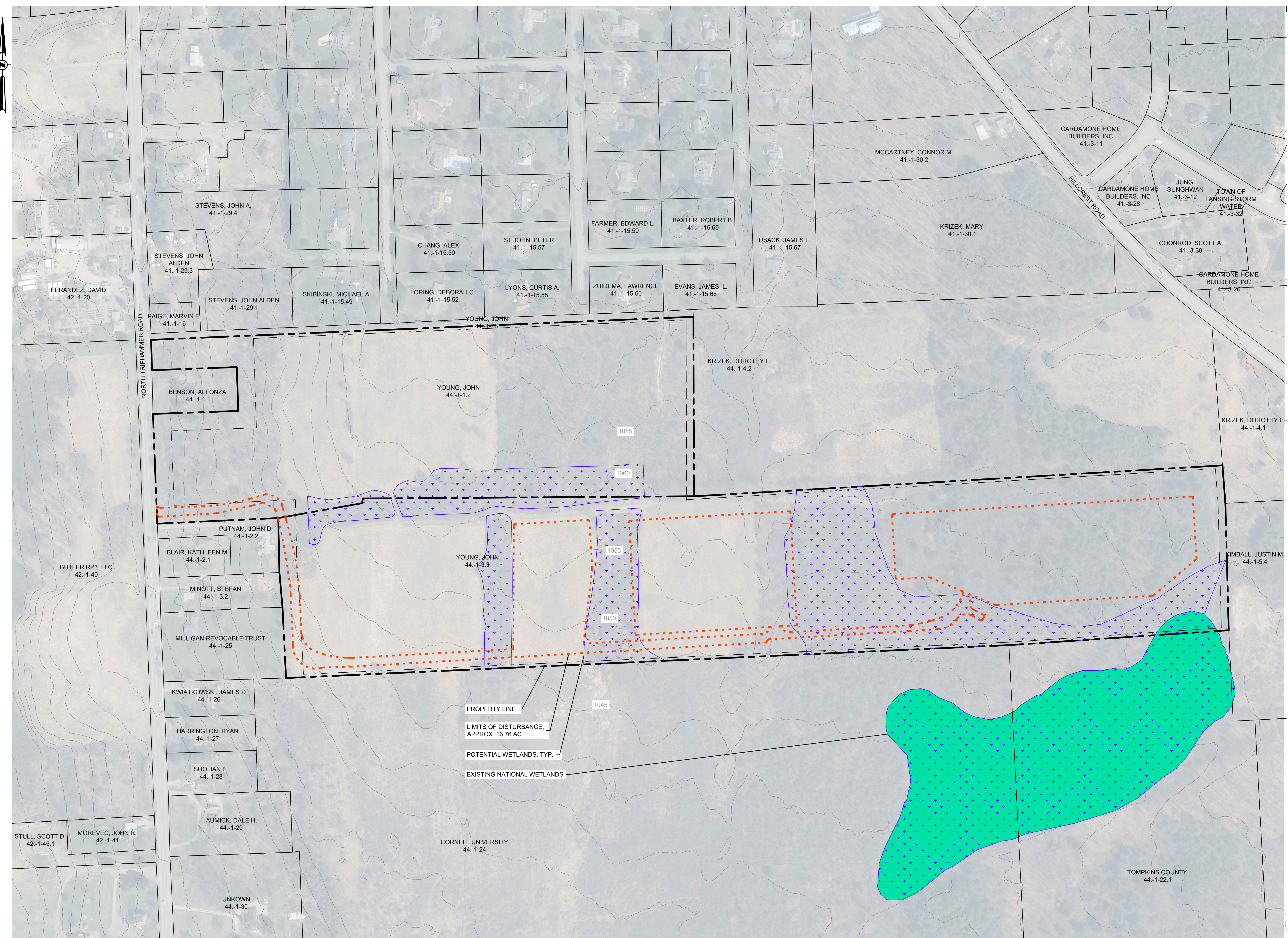
EXISTING  
CONDITIONS  
PLAN



Drawing Number:  
**C-100**

Sheet 3 of 11  
PWGC Project Number:

DRS2404











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Approved By	MTS	Scale 1" = 150'

Client:  
NY LANSING II, LLC  
P.O. BOX 384  
CALLICOON, NY 12783  
Project:  
**NORTH TRIPHAMMER ROAD  
SOLAR FARM CONCEPTUAL  
SITE PLAN**  
Project Address:  
NORTH TRIPHAMMER ROAD  
TOWN OF LANSING  
TOMPKINS COUNTY, NEW YORK  
County Tax Map Number: 44-1-1.2 & 44-1-3.3  
Regulatory Reference Number: ...

CONCEPTUAL  
GRADING AND  
DRAINAGE PLAN



Drawing Number:  
**C-200**

Sheet 5 of 11  
PWGC Project Number:

DRS2404







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CONSULTANTS

NY LANSING II, LLC  
P.O. BOX 384  
CALLICOON, NY 12783

PROJECT  
NORTH TRIPHAMMER ROAD  
SOLAR FARM CONCEPTUAL  
SITE PLAN

PROJECT ADDRESS  
NORTH TRIPHAMMER ROAD  
TOWN OF LANSING  
TOMPKINS COUNTY, NEW YORK

COUNTY TAX MAP NUMBER  
44-1-1.2 & 44-1-3.3

REGULATORY REFERENCE NUMBER  
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TITLE OF DRAWING  
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CONCEPTUAL  
EROSION AND SED.  
CONTROL PLAN

DRAWING NUMBER  
C-201

SHEET  
6 of 11

PROJECT NUMBER  
DRS2404

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DESIGNED BY  
DATE SUBMITTED

DRAWN BY  
DATE CREATED  
03/28/24

APPROVED BY  
SCALE  
1" = 150'

CLIENT REVIEW  
04/05/2024

Number	Revision Description	Revision Date
1	CLIENT REVIEW	04/05/2024

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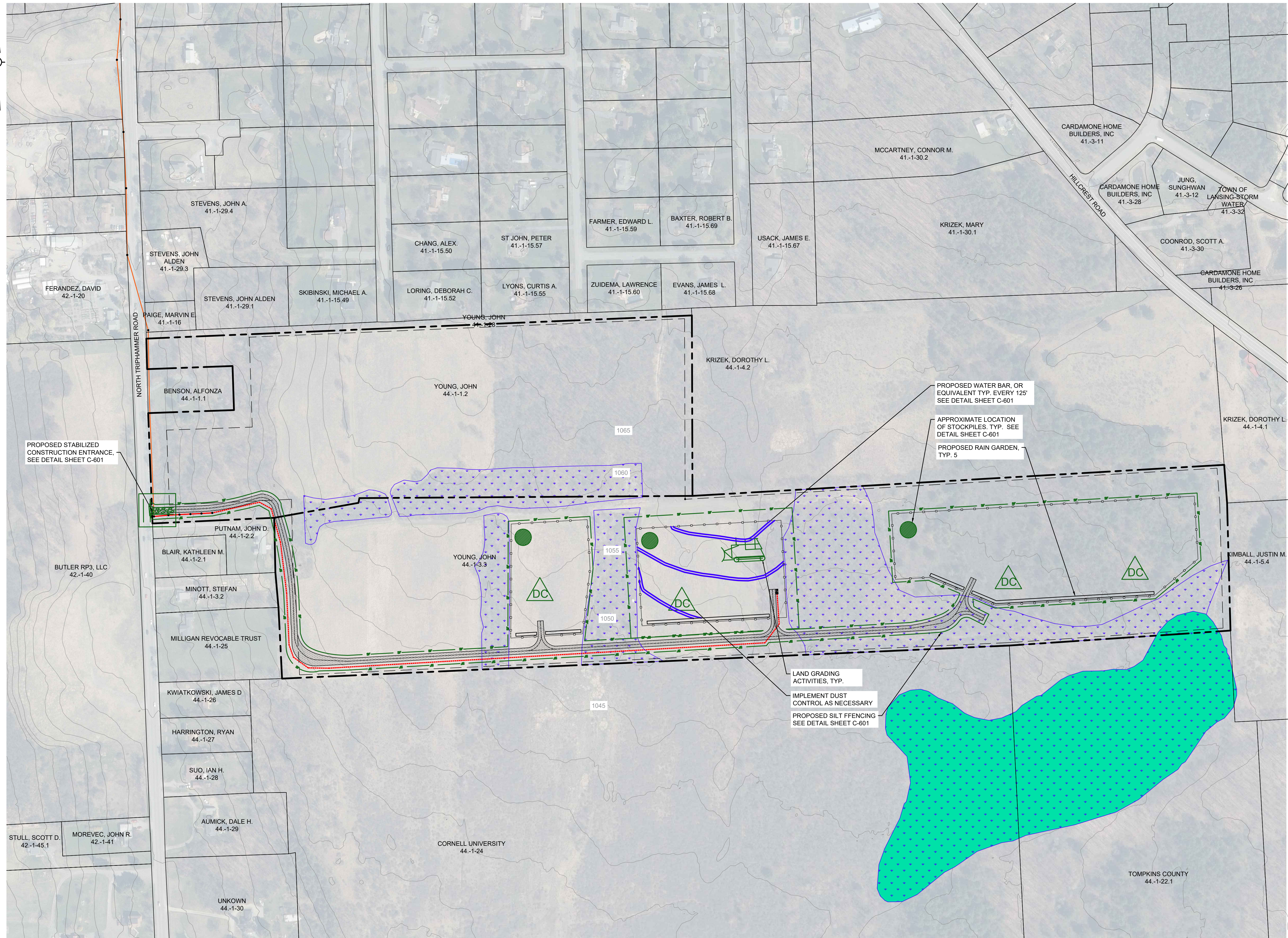
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PROPOSED STABILIZED  
CONSTRUCTION ENTRANCE  
SEE DETAIL SHEET C-601

PROPOSED WATER BAR, OR  
EQUIVALENT TYP. EVERY 125'  
SEE DETAIL SHEET C-601

APPROXIMATE LOCATION  
OF STOCKPILES. TYP. SEE  
DETAIL SHEET C-601

PROPOSED RAIN GARDEN,  
TYP. 5

LAND GRADING  
ACTIVITIES, TYP.

IMPLEMENT DUST  
CONTROL AS NECESSARY

PROPOSED SILT FENCING  
SEE DETAIL SHEET C-601

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C-201

6 of 11

DRS2404

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Approved By	MTS	Scale 1" = 150'

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**NY LANSING II, LLC**  
 P.O. BOX 384  
 CALLICOON, NY 12783

Project:  
**NORTH TRIPHAMMER ROAD  
 SOLAR FARM CONCEPTUAL  
 SITE PLAN**

Project Address:  
 NORTH TRIPHAMMER ROAD  
 TOWN OF LANSING  
 TOMPKINS COUNTY, NEW YORK

County Tax Map Number: 44-1-1.2 & 44-1-3.3  
 Regulatory Reference Number: ...

File of Drawing: ...

CONCEPTUAL LANDSCAPING PLAN

Drawing Number: **C-500**

Sheet **7** of **11**

PWGC Project Number: **DRS2404**

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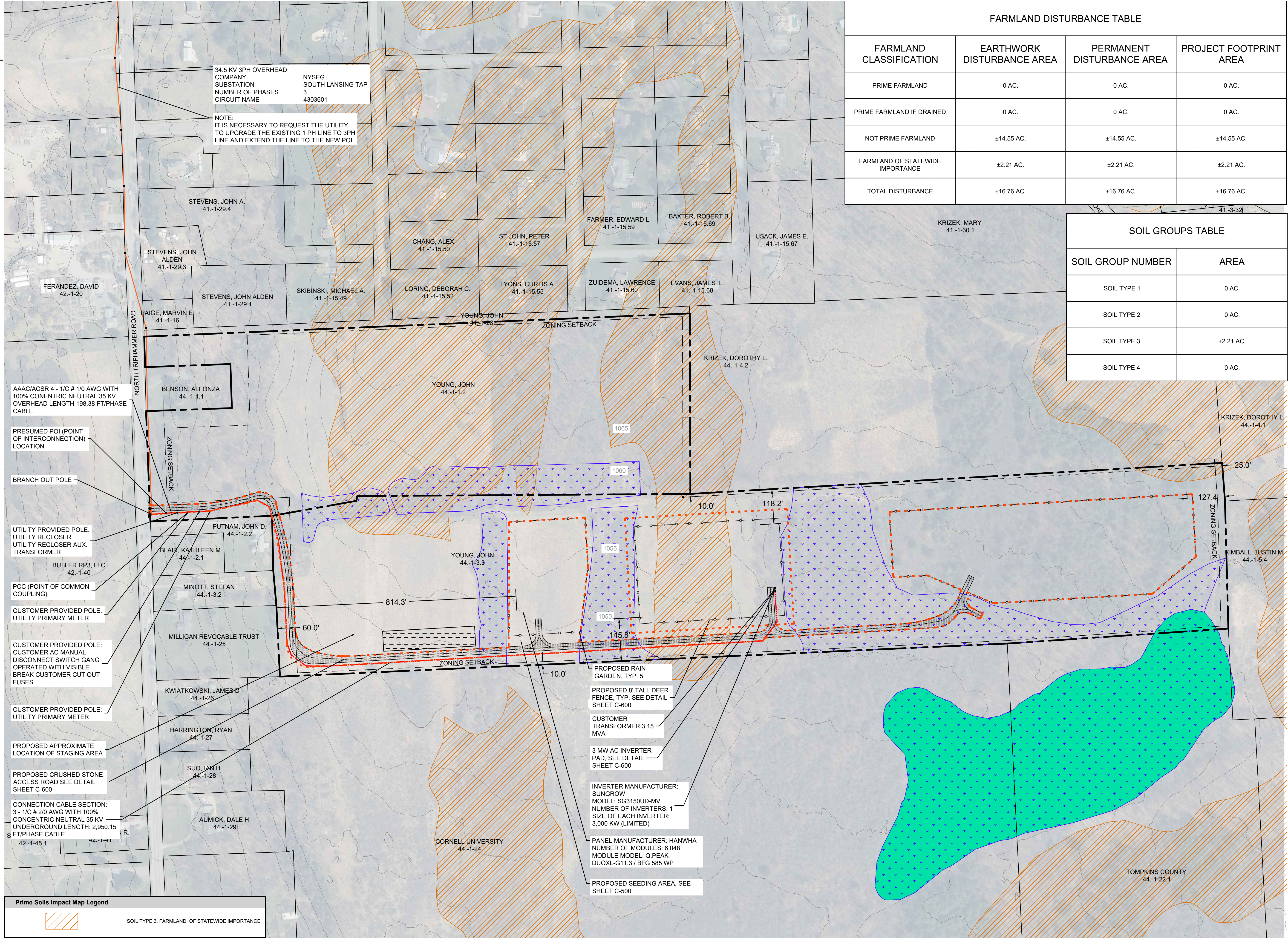


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FARMLAND DISTURBANCE TABLE			
FARMLAND CLASSIFICATION	EARTHWORK DISTURBANCE AREA	PERMANENT DISTURBANCE AREA	PROJECT FOOTPRINT AREA
PRIME FARMLAND	0 AC.	0 AC.	0 AC.
PRIME FARMLAND IF DRAINED	0 AC.	0 AC.	0 AC.
NOT PRIME FARMLAND	±14.55 AC.	±14.55 AC.	±14.55 AC.
FARMLAND OF STATEWIDE IMPORTANCE	±2.21 AC.	±2.21 AC.	±2.21 AC.
<b>TOTAL DISTURBANCE</b>	<b>±16.76 AC.</b>	<b>±16.76 AC.</b>	<b>±16.76 AC.</b>

SOIL GROUPS TABLE	
SOIL GROUP NUMBER	AREA
SOIL TYPE 1	0 AC.
SOIL TYPE 2	0 AC.
SOIL TYPE 3	±2.21 AC.
SOIL TYPE 4	0 AC.



**Prime Soils Impact Map Legend**

	SOIL TYPE 3, FARMLAND OF STATEWIDE IMPORTANCE
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**NY LANSING II, LLC**  
 P.O. BOX 384  
 CALLICOON, NY 12783

**Project:**  
**NORTH TRIPHAMMER ROAD SOLAR FARM CONCEPTUAL SITE PLAN**

**Project Address:**  
 NORTH TRIPHAMMER ROAD  
 TOWN OF LANSING  
 TOMPKINS COUNTY, NEW YORK

County Tax Map Number: 44-1-1.2 & 44-1-3.3  
 Regulatory Reference Number: ...

**PRIME SOILS IMPACT MAP**

State of New York Professional Engineer Seal: MICHAEL SCANNON, 103321

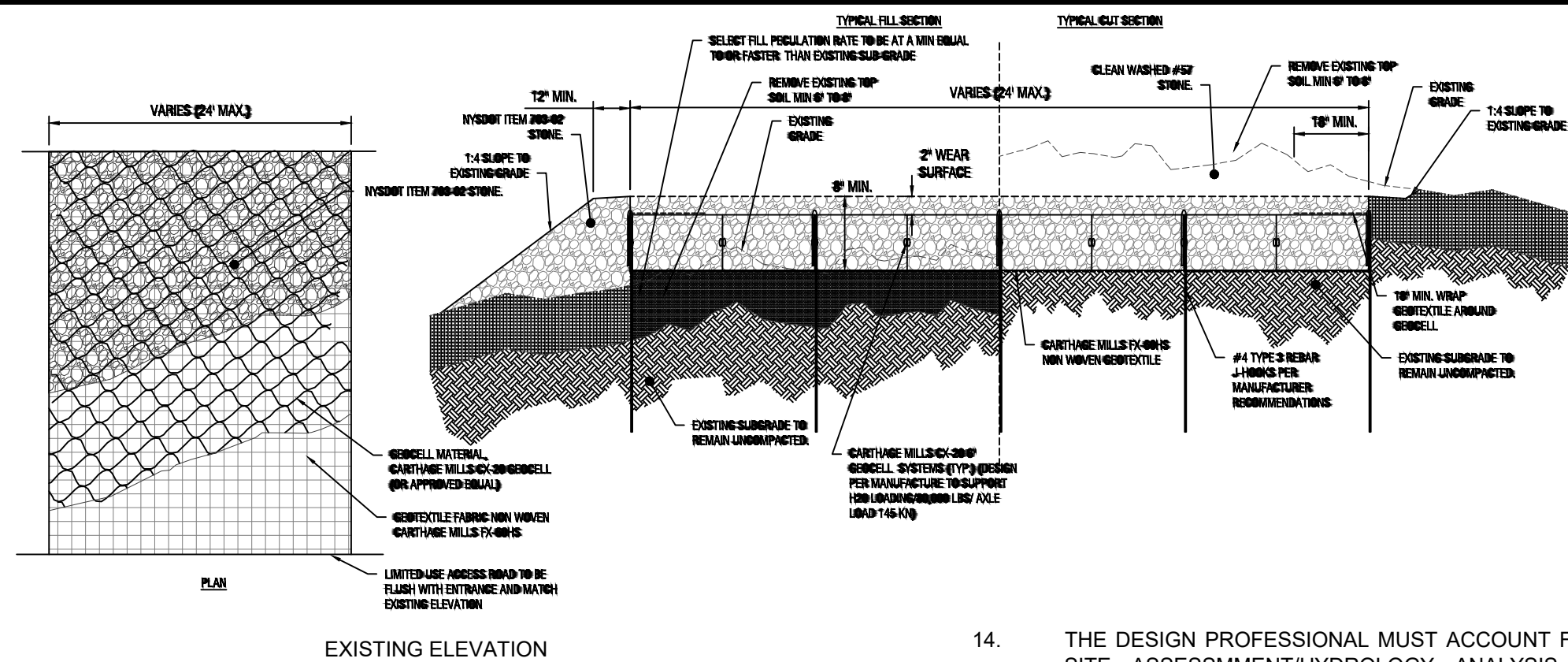
**C-501**

Sheet 8 of 11

PWGC Project Number: DR52404

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**GENERAL NOTES**

1. PROVIDE A 4800 LB/FT ENHANCED WOVEN GEOTEXTILE SEPARATION LAYER AND INSTALL PER MANUFACTURER RECOMMENDATIONS INCLUDING OVERLAPS BASED ON SUB GRADE CBR.
2. THE GEOCELL SHALL BE CONNECTED WITH TYP 3 REBAR J HOOKS.
3. PROVIDE TYP 3 ANCHORS TO KEEP PANELS OPEN FOR INFILL AS REQUIRED
4. GEOCELL INFILL SHALL BE 3/4" TO 1.5" CRUSHED AGGREGATE WITH FINE LIMITED TO LESS THAN 10% TO ALLOW FREE DRAINAGE.
5. LIMIT THE DROP OF INFILL TO PREVENT PANEL DISTORTION.
6. ASSUME HS-20 LOADING

**PERMEABLE ACCESS ROAD GENERAL NOTES**

1. USE OF THIS DETAIL/CRITERION IS LIMITED TO ACCESS ROADS USED ON AN OCCASIONAL BASIS ONLY (I.E. PROVIDE ACCESS FOR MOWING EQUIPMENT REPAIR OR MAINTENANCE, ETC.)
2. LIMITED USE PERVIOUS ACCESS ROAD IS LIMITED TO LOW IMPACT IRREGULAR MAINTENANCE ACCESS ASSOCIATED WITH RENEWABLE ENERGY PROJECTS IN NEW YORK STATE.
3. REMOVE STUMPS, ROCKS AND DEBRIS AS NECESSARY, FILL VOIDS TO MATCH EXISTING NATIVE SOILS AND COMPACTION LEVEL.
4. REMOVED TOPSOIL MAY BE SPREAD IN ADJACENT AREAS AS DIRECTED BY THE PROJECT ENGINEER. COMPACT TO THE DEGREE OF THE NATIVE INSITU SOIL. DO NOT PLACE IN AN AREA THAT IMPEDES STORMWATER DRAINAGE.
5. GRADE ROADWAY, WHERE NECESSARY TO NATIVE SOIL AND DESIRED ELEVATION MINOR GRADING FOR CROSS SLOPE CUT AND FILL MAY BE REQUIRED
6. REMOVE 6" TO 8" TOPSOIL AS DIRECTED BY ENGINEER.
7. REMOVE REFUSE SOILS AS DIRECTED BY THE PROJECT ENGINEER. DO NOT PLACE IN AN ARE THAT IMPEDES STORMWATER DRAINAGE.
8. ROADWAY WIDTH TO BE DETERMINED BY CLIENT.
9. THE LIMITED USE PERVIOUS ACCESS ROAD CROSS SLOPE SHALL BE 0% IN MOST CASES AND SHOULD NOT EXCEED 5%. THE LONGITUDINAL SLOPE OF THE ACCESS DRIVE SHOULD NOT EXCEED 5%.
10. LIMITED USE PERVIOUS ACCESS ROAD IS NOT INTENDED TO BE UTILIZED FOR CONSTRUCTION WHICH MAY SUBJECT THE ACCESS TO SEDIMENT TRACKING. THIS SPECIFICATION IS TO BE DEVELOPED FOR POST-CONSTRUCTION USE. SOIL RESTORATION PRACTICES MAY BE APPLICABLE TO RESTORE CONSTRUCTION RELATED COMPACTION TO PRE-EXISTING CONDITIONS AND SHOULD BE VERIFIED BY SOIL PENETROMETER READINGS. THE PENETROMETER READINGS SHALL BE COMPARED TO THE RESPECTIVE RECORDED READINGS TAKEN PRIOR TO CONSTRUCTION, EVERY 100 LINEAR FEET ALONG THE PROPOSED ROADWAY.
11. TO ENSURE THAT SOIL IS NOT TRACKED ONTO THE LIMITED USE PERVIOUS ACCESS ROAD, IT SHALL NOT BE USED BY CONSTRUCTION VEHICLES TRANSPORTING SOIL, FILL MATERIAL, ETC. IF THE LIMITED USE PERVIOUS ACCESS IS COMPLETED DURING INITIAL PHASES OF CONSTRUCTION, A STANDARD NEW YORK STATE STABILIZED CONSTRUCTION ACCESS SHALL BE CONSTRUCTED AND UTILIZED TO REMOVE SEDIMENT FROM CONSTRUCTION VEHICLES AND EQUIPMENT PRIOR TO ENTERING THE LIMITED USE PERVIOUS ACCESS ROAD FROM ANY LOCATION ON, OR OFF SITE. MAINTENANCE OF THE PERVIOUS ACCESS ROAD WILL BE REQUIRED IF SEDIMENT IS OBSERVED WITHIN THE CLEAN STONE.
12. THE LIMITED USE PERVIOUS ACCESS ROAD SHALL NOT BE CONSTRUCTED OR USED UNTIL ALL AREAS SUBJECT TO RUNOFF ONTO THE PERVIOUS ACCESS HAVE ACHIEVED FINAL STABILIZATION.
13. PROJECTS SHOULD AVOID INSTALLATION OF THE LIMITED USE PERVIOUS ACCESS ROAD IN POORLY DRAINED AREAS, HOWEVER IF NO A

**GRAVEL ACCESS ROAD DETAIL**

NOT TO SCALE

14. THE DESIGN PROFESSIONAL MUST ACCOUNT FOR THE LIMITED USE PERVIOUS ACCESS ROAD IN THEIR SITE ASSESSMENT/HYDROLOGY ANALYSIS. IF THE HYDROLOGY ANALYSIS SHOWS THAT THE HYDROLOGY HAS BEEN ALTERED FROM PRE- TO POST-DEVELOPMENT CONDITIONS (SEE APPENDIX A OF GP-0-20-001 FOR THE DEFINITION OF "ALTER THE HYDROLOGY..."), THE DESIGN MUST INCLUDE THE NECESSARY DETENTION/RETENTION PRACTICES TO ATTENUATE THE RATES (10 AND 100 YEAR EVENTS) TO PRE-DEVELOPMENT CONDITIONS.

**GEOCELL MATERIAL NOTES:**

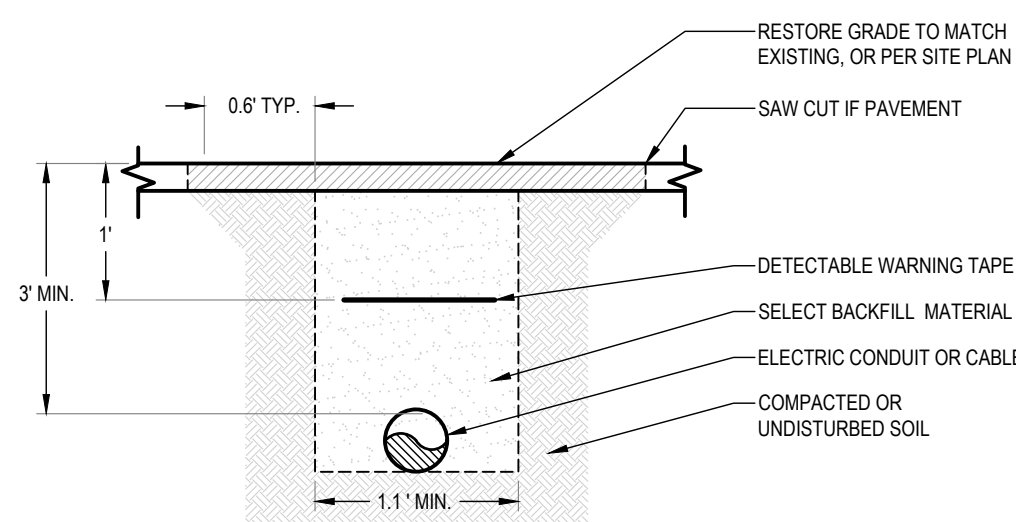
1. THE GEOCELL, OR COMPARABLE PRODUCT, IS SUGGESTED FOR USE ON ROAD PROFILES EXCEEDING 5%.
2. THE GEOCELL PRODUCT IS INTENDED TO LIMIT SHIFTING STONE MATERIAL DURING USE.
3. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
4. WHERE REQUIRED, A NATIVE SOIL WEDGE SHALL BE PLACED TO ACCOMMODATE ROAD CROSS SLOPE OF 2%. NATIVE SOIL SHALL BE COMPACTED TO MATCH EXISTING SOIL CONDITIONS.
5. GRAVEL FILL MATERIAL SHALL CONSIST OF 1-4" CLEAN, DURABLE, SHARP-ANGLED CRUSHED STONE OF UNIFORM QUALITY, MEETING THE SPECIFICATIONS OF NYSDOT ITEM 703-02, SIZE DESIGNATION 3-5 OF TABLE 703-4. STONE MAY BE PLACED IN FRONT OF, AND SPREAD WITH, A TRACKED VEHICLE. GRAVEL SHALL NOT BE COMPACTED.
6. GEOCELL SYSTEM SHALL BE CARTHAGE MILLS CX-20 6" HS20 LOADING OR APPROVED EQUAL. GEOCELL SHALL BE DESIGNED BASED ON EXISTING SOIL CONDITIONS AND PROPOSED HAUL ROAD SLOPES.
7. LIMITED USE PERVIOUS ACCESS ROAD SHALL BE TOP DRESSED AS REQUIRED WITH ONLY 1-4" CRUSHED STONE, SIZE 3A, MEETING NYSDOT ITEM 703-02 SPECIFICATIONS.
8. THE TOP EDGES OF ADJACENT CELL WALLS SHALL BE FLUSH WHEN CONNECTING. ALIGN THE I-SLOTS FOR INTERLEAF AND END TO END CONNECTIONS. THE GEOCELL PANELS SHALL BE CONNECTED WITH TYPE 3 J HOOKS AT EACH INTERLEAF AND END TO END CONNECTIONS. REFER TO MANUFACTURER'S SPECIFICATION FOR PROPER INSTALLATION, TYING AND CONNECTIONS.
9. PREPARE THE SUBGRADE AS SHOWN ON THE CONSTRUCTION DRAWINGS.
10. COMPACT THE SOIL TO A MINIMUM 95% STANDARD PROCTOR.
11. VERIFY THAT THE SUBGRADE STRENGTH, IF UNACCEPTABLE, THE SOILS SHALL BE REMOVED AND REPLACED AS DIRECTED BY THE ENGINEER.
12. WHERE REQUIRED, PROVIDE GEOTEXTILE SEPARATION LAYER.
13. EXPAND THE GEOCELL SECTIONS INTO POSITION AND CONNECT THE END TO END INTERLEAF CONNECTIONS WITH ATRA KEYS.
14. PLACE THE SPECIFIED INFILL MATERIAL TO 2 INCHES ABOVE CELL WALLS AND COMPACT TO A MINIMUM 95% STANDARD PROCTOR.
15. PROVIDE ADDITIONAL SURFACE MATERIAL AS SPECIFIED.

BASIS OF DESIGN: CARTHAGE MILL

**WOVEN GEOTEXTILE MATERIAL NOTES:**

1. GEOTEXTILE MATERIAL TO B CARTHAGE MILL FX-60HS OR APPROVED EQUAL.

BASIS OF DESIGN: CARTHAGE MILLS

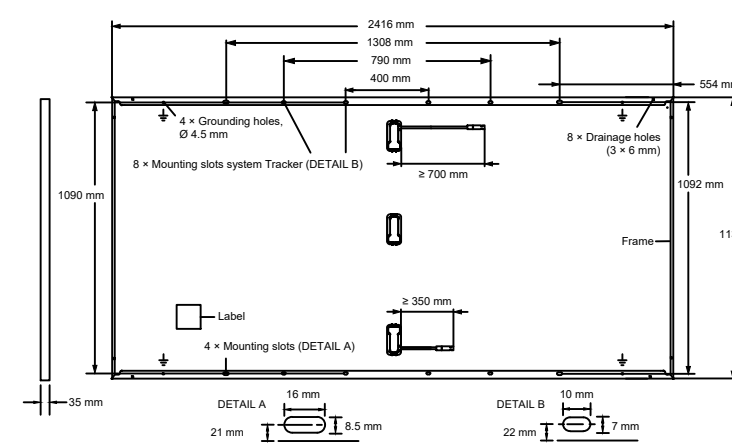


**ELECTRICAL TRENCH DETAIL**

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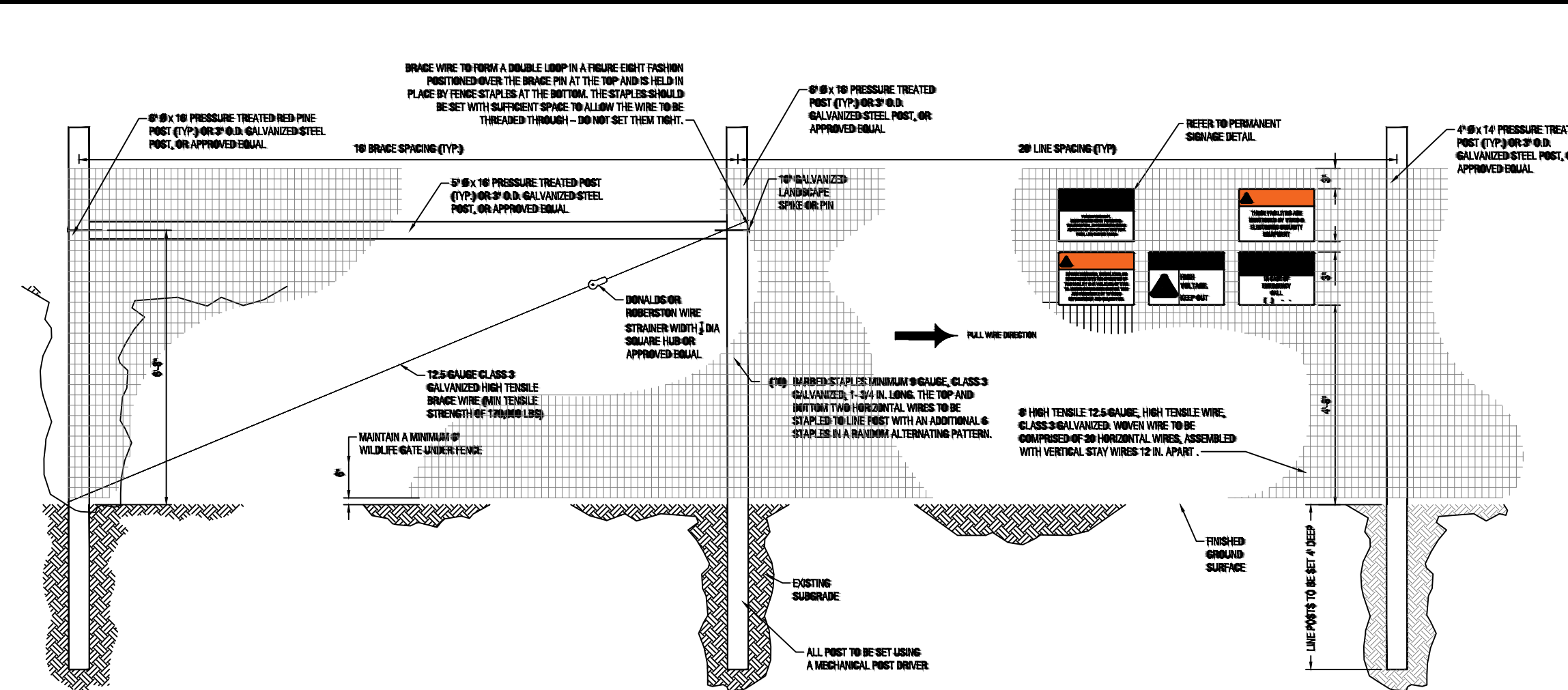
**MECHANICAL SPECIFICATION**

Format	2416 mm x 1134 mm x 35 mm (including frame)
Weight	34.4 kg
Front Cover	2 mm thermally pre-stressed glass with anti-reflection technology
Back Cover	2 mm semi-tempered glass
Frame	Anodised aluminium
Cell	6 x 26 monocrystalline Q ANTUM solar half cells
Junction box	53-101 mm x 32-60 mm x 15-18 mm Protection class IP67, with bypass diodes
Cable	4 mm² Solar cable; (+) ≥ 700 mm, (-) ≥ 350 mm
Connector	Stäubli MC4-Evo2, Hanhwa Q CELLS HQC4; IP68



**SOLAR PANEL MECHANICAL SPECIFICATION DETAIL**

NOT TO SCALE

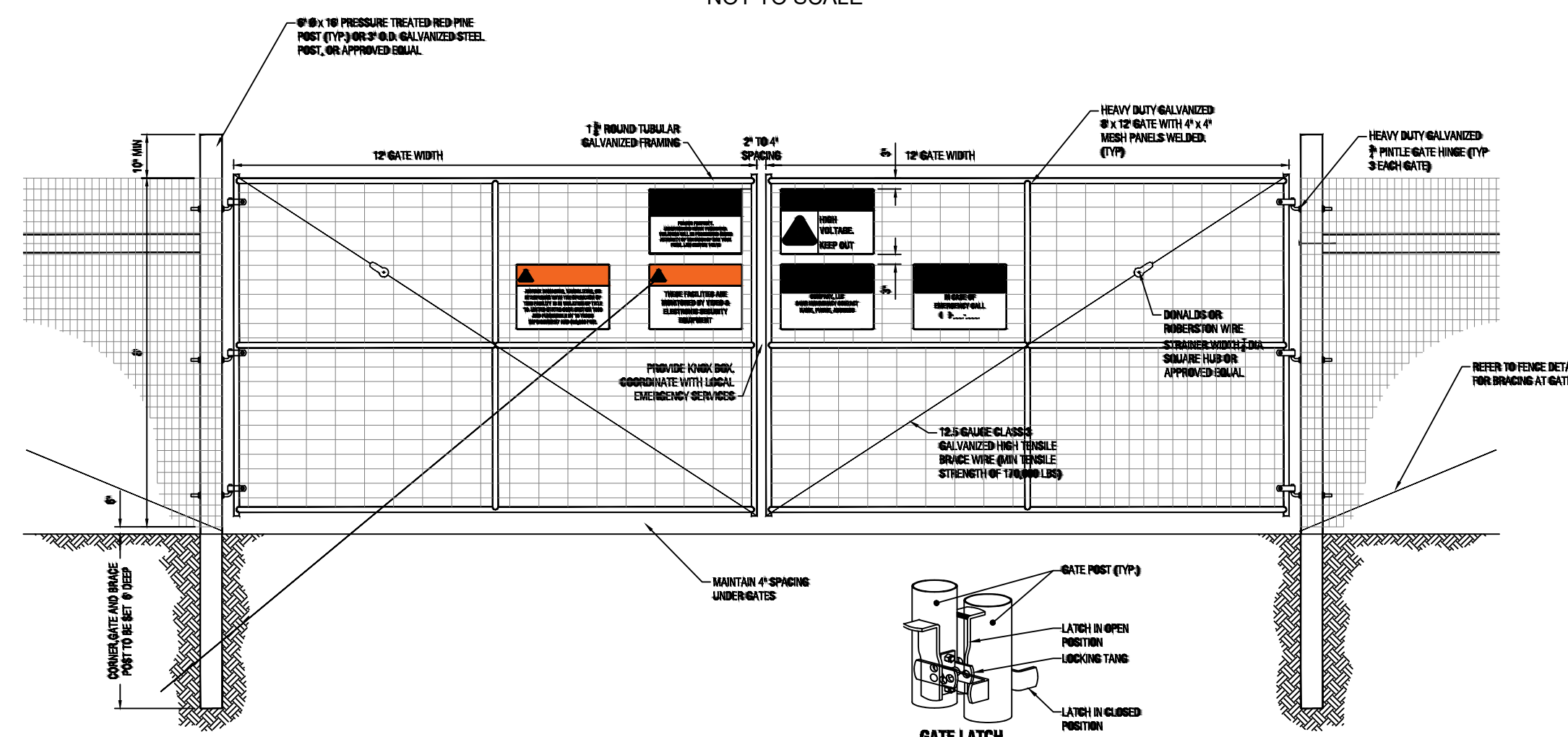


**BRACING NOTES**

1. BRACING IS REQUIRED AT ALL CORNER, END GATE, AND PULL ASSEMBLIES IN THE FENCE.
2. CORNERS ARE REQUIRED AT ALL POINTS WHERE THE FENCE ALIGNMENT CHANGES 15 DEGREES OR MORE THREE, 6 IN. X 16 FT. VERTICAL POSTS AND TWO 5 IN. X 16 FT. HORIZONTAL BRACES ARE REQUIRED FOR EACH CORNER.
3. END BRACING IS REQUIRED WHERE THE FENCE ENDS AT A BUILDING OR ON EACH SIDE OF A GATE OPENING. TWO, 6 IN. X 16 FT. VERTICAL POSTS AND ONE 5 IN. X 16 FT. HORIZONTAL BRACE ARE REQUIRED FOR EACH END BRACE.
4. PULL ASSEMBLIES ARE REQUIRED IN STRAIGHT SECTIONS OF FENCE SO THAT THE MAXIMUM DISTANCE BETWEEN CORNERS DOES NOT EXCEED 1,320 DT. TWO 6 IN. X 16 FT. VERTICAL POSTS AND ONE 5 IN. X 16 FT. BRACE ARE REQUIRED
5. DOUBLE BRACES (FIGURE 4) SHOULD BE USED ON EACH END FOR STRAIGHT FENCE LINES EXCEEDING 1,000 FT. DOUBLE END BRACES REQUIRE THREE 6 IN. X 16 FT. HORIZONTAL BRACES.

**8-FT DEER FENCE DETAIL**

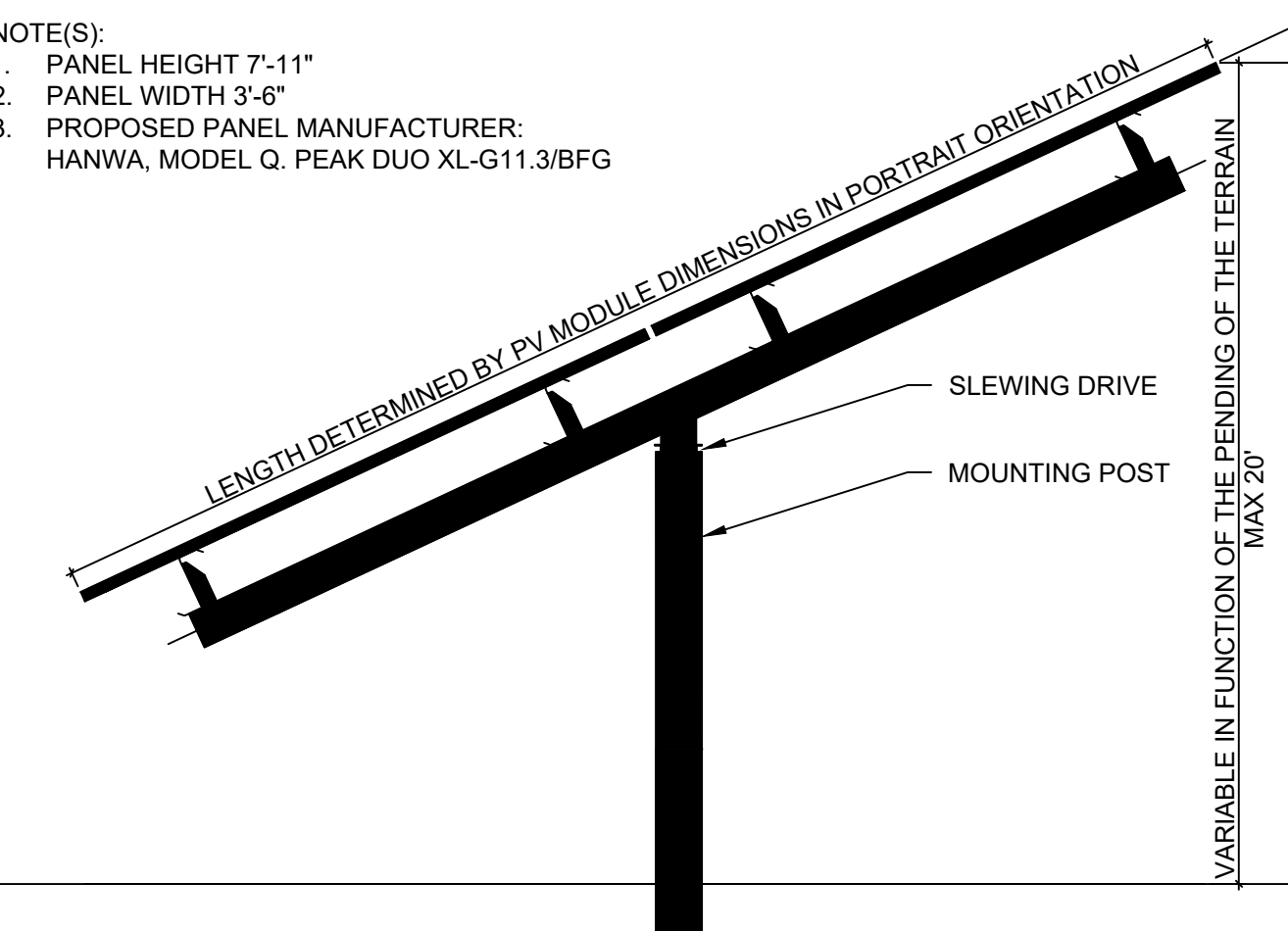
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**8-FT DEER FENCE GATE DETAIL**

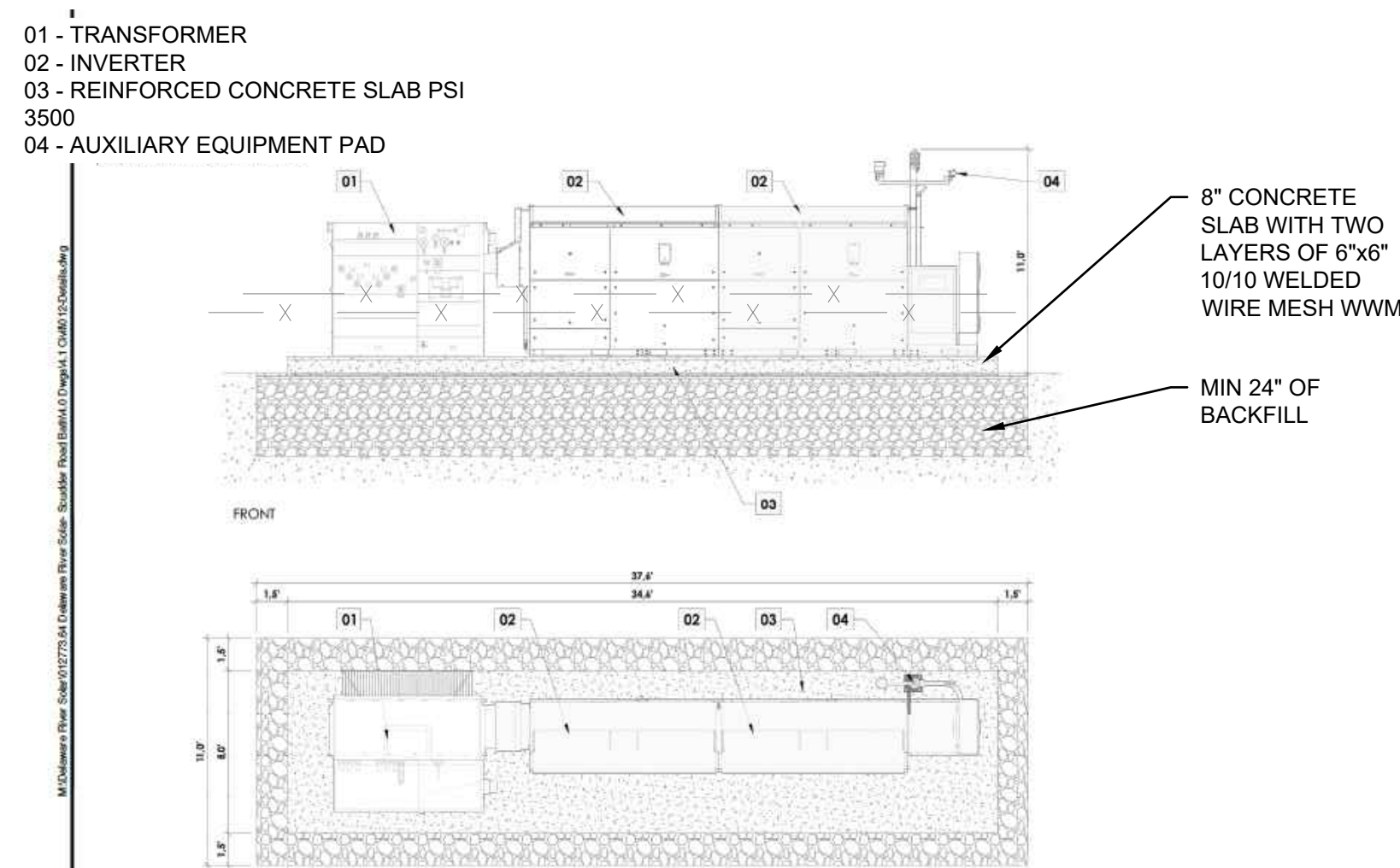
NOT TO SCALE

- NOTE(S):
1. PANEL HEIGHT 7'-11"
  2. PANEL WIDTH 3'-6"
  3. PROPOSED PANEL MANUFACTURER: HANWA, MODEL Q. PEAK DUO XL-G11.3/BFG



**TYPICAL RACK SECTION DETAIL**

NOT TO SCALE



**CONCRETE EQUIPMENT PAD DETAIL**

NOT TO SCALE



630 Johnson Avenue, Suite 7  
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**CONSULTANTS**

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1	CLIENT REVIEW	04/05/2024
Number	Revision Description	Revision Date

Designed By: \_\_\_\_\_ Date Submitted: \_\_\_\_\_  
 Drawn By: **HLW** Date Created: **03/28/24**  
 Approved By: **MTS** Scale: **AS NOTED**

**NORTH TRIPHAMMER ROAD SOLAR FARM CONCEPTUAL SITE PLAN**

Project Address:  
**NORTH TRIPHAMMER ROAD  
 TOWN OF LANSING  
 TOMPKINS COUNTY, NEW YORK**

County Tax Map Number: **44-1-1.2 & 44-1-3.3** Contract Number: **---**  
 Regulatory Reference Number: **---**

**SITE DETAILS**

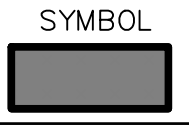
STATE OF NEW YORK  
 MICHAEL SCARF  
 LICENSED PROFESSIONAL ENGINEER  
 103321

Drawing Number: **C-600**  
 Sheet **9** of **11**  
 Project Number: **DRS2404**

Unauthorized alteration or addition to the drawings and related documents is a violation of Section 2209 of the New York State Education Law



**STANDARD AND SPECIFICATIONS FOR TEMPORARY CONSTRUCTION AREA SEEDING FOR WINTER SHUTDOWN**



- CONSTRUCTION SPECIFICATIONS**
1. THE AREA MUST BE ROUGH GRADED AND SLOPES PHYSICALLY STABLE. LARGE DEBRIS AND ROCKS ARE USUALLY REMOVED.
  2. SEED BED MUST BE SEEDED WITHIN 24 HOURS OF DISTURBANCE OR SCARIFICATION OF THE SOIL SURFACE WILL BE NECESSARY PRIOR TO SEEDING.
  3. FERTILIZER OR LIME ARE NOT TYPICALLY USED FOR TEMPORARY SEEDINGS.
  4. LATE FALL OR EARLY WINTER, THEN SEED CERTIFIED 'ARROSTOCK' WINTER RYE AT 100 LBS. PER ACRE (2.5 LBS./1000 SQ. FT.).
  5. HYDRO-SEEDING METHOD TO BE USED WHICH WILL PROVIDE UNIFORM APPLICATION OF SEED TO THE AREA AND RESULT IN RELATIVELY GOOD SOIL TO SEED CONTACT.
  6. MULCH THE AREA WITH WOOD FIBER HYDRO-MULCH OR OTHER SPRAYABLE PRODUCTS APPROVED FOR EROSION CONTROL.

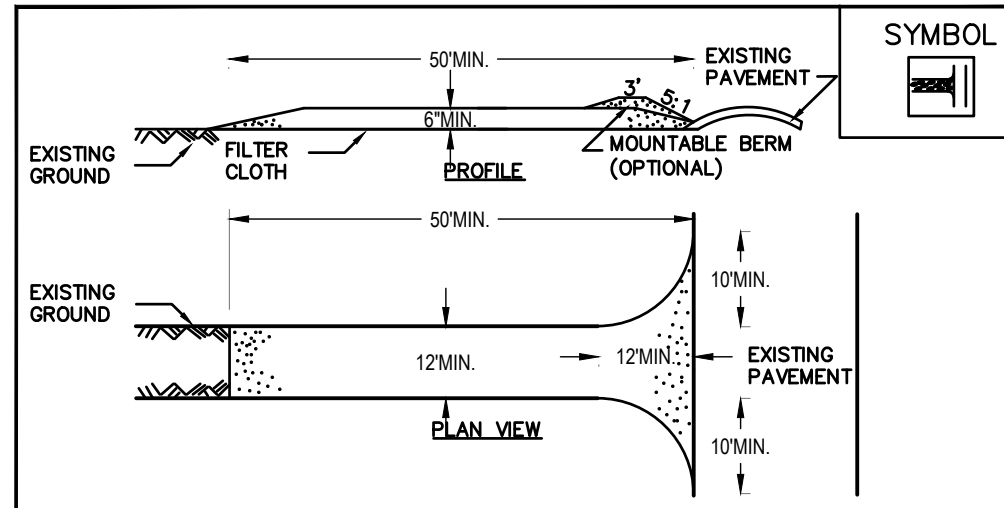
**STANDARD AND SPECIFICATIONS FOR LOOSE STABILIZATION BLANKETS FOR WINTER SHUTDOWN**

**HYDRAULICALLY APPLIED BLANKETS**  
 THESE BLANKETS ARE FORMED BY MIXING DIFFERENT TYPES OF MATERIALS WITH WATER AND ARE THEN APPLIED USING STANDARD HYDROSEEDING EQUIPMENT. THESE BLANKETS SHOULD NOT BE USED IN AREAS OF CONCENTRATED FLOW SUCH AS DITCHES AND CHANNELS.  
**FLEXIBLE GROWTH MEDIUM (FGM)** - THIS METHOD HAS THE ADDED COMPONENT OF 1/2 INCH LONG, CRIMPED MANMADE FIBERS WHICH ADD A MECHANICAL BOND TO THE CHEMICAL BOND PROVIDED BY BRNS. THIS INCREASES THE BLANKET'S RESISTANCE TO BOTH HANDS OF IMPACT AND EROSION DUE TO RUNOFF. UNLIKE BRNS, A FLEXIBLE GROWTH MEDIUM TYPICALLY DOES NOT REQUIRE A CURING TIME TO BE EFFECTIVE. PROPERLY APPLIED, AN FGM IS ALSO VERY EFFECTIVE.  
 THERE IS NO NEED TO SMOOTH THE SLOPE PRIOR TO APPLICATION. IN FACT SOME ROUGHENING OF THE SURFACE (EITHER NATURAL OR MECHANICALLY INDUCED) IS PREFERABLE.  
 HOWEVER, LARGE ROCKS (>9 INCHES) AND EXISTING RILLS SHOULD BE REMOVED PRIOR TO APPLICATION. MIXING AND APPLICATION RATES SHOULD FOLLOW MANUFACTURER'S RECOMMENDATIONS.

- CONSTRUCTION SPECIFICATIONS**
1. FOMS ARE TYPICALLY APPLIED IN TWO STAGES. UNLESS SPECIFICALLY RECOMMENDED TO BE APPLIED IN ONE APPLICATION BY THE MANUFACTURER, THE SEED MIXTURE AND SOIL AMENDMENTS SHOULD BE APPLIED FIRST.
  2. AFTER THE SEED MIXTURE IS APPLIED, THE HYDRAULICALLY APPLIED BLANKETS SHOULD BE SPRAYED OVER THE AREA AT THE REQUIRED APPLICATION RATE, ACCORDING TO THE MANUFACTURER'S RECOMMENDATIONS.

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 NEW YORK STATE SOIL & WATER CONSERVATION COMMITTEE

**SEEDING/STABILIZATION BLANKET SPECIFICATIONS**

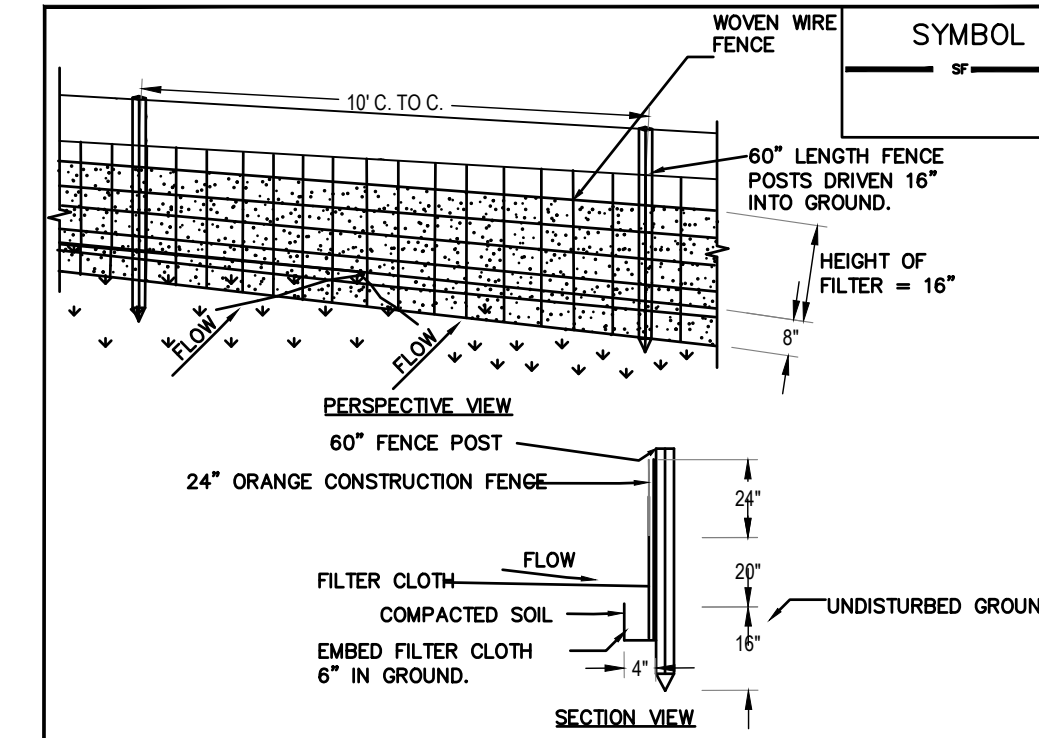


**CONSTRUCTION SPECIFICATIONS**

1. STONE SIZE - USE 2" STONE, OR RECLAIMED OR RECYCLED CONCRETE EQUIVALENT.
2. LENGTH - NOT LESS THAN 50 FEET (EXCEPT ON A SINGLE RESIDENCE LOT WHERE A 30 FOOT MINIMUM LENGTH WOULD APPLY).
3. THICKNESS - NOT LESS THAN SIX (6) INCHES.
4. WIDTH - TWELVE (12) FOOT MINIMUM, BUT NOT LESS THAN THE FULL WIDTH AT POINTS WHERE INGRESS OR EGRESS OCCURS. TWENTY-FOUR (24) FOOT IF SINGLE ENTRANCE TO SITE.
5. FILTER CLOTH - WILL BE PLACED OVER THE ENTIRE AREA PRIOR TO PLACING OF STONE.
6. SURFACE WATER - ALL SURFACE WATER FLOWING OR DIVERTED TOWARD CONSTRUCTION ENTRANCES SHALL BE PIPED ACROSS THE ENTRANCE. IF PIPING IS IMPRACTICAL, A MOUNTABLE BERM WITH 5:1 SLOPES WILL BE PERMITTED.
7. MAINTENANCE - THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION WHICH WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHTS-OF-WAY. ALL SEDIMENT SPILLED, DROPPED, WASHED OR TRACTED ONTO PUBLIC RIGHTS-OF-WAY MUST BE REMOVED IMMEDIATELY.
8. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH STONE AND WHICH DRAINS INTO AN APPROVED SEDIMENT TRAPPING DEVICE.
9. PERIODIC INSPECTION AND NEEDED MAINTENANCE SHALL BE PROVIDED AFTER EACH RAIN.

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**STABILIZED CONSTRUCTION ENTRANCE**



**CONSTRUCTION SPECIFICATIONS**

1. WOVEN WIRE FENCE TO BE FASTENED SECURELY TO FENCE POSTS WITH WIRE TIES OR STAPLES. POSTS SHALL BE STEEL EITHER "T" OR "U" TYPE OR HARDWOOD.
2. FILTER CLOTH AND ORANGE CONSTRUCTION FENCING TO BE FASTENED SECURELY TO WOVEN WIRE FENCE WITH TIES SPACED EVERY 24" AT TOP AND MID SECTION. FENCE SHALL BE WOVEN.
3. WHEN TWO SECTIONS OF FILTER CLOTH AND ORANGE CONSTRUCTION FENCING ADJOIN EACH OTHER THEY SHALL BE OVER-LAPPED BY SIX INCHES AND FOLDED. FILTER CLOTH SHALL BE EITHER FILTER X, MIRAFI 100X, STABILUNKA T140N, OR APPROVED EQUIVALENT.
4. PREFABRICATED UNITS SHALL BE GEOTAF, ENVROFENCE, OR APPROVED EQUIVALENT.
5. MAINTENANCE SHALL BE PERFORMED AS NEEDED AND MATERIAL REMOVED WHEN 'BULGES' DEVELOP IN THE SILT FENCE.

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**SILT FENCE**

**CONSTRUCTION SPECIFICATIONS**

1. CLEAN AND STRIP ROADED AND PARKING AREAS OF ALL VEGETATION, ROOTS AND OTHERS OBJECTIONABLE MATERIAL.
2. LOCATE PARKING AREAS ON NATURALLY FLAT AREAS AS AVAILABLE. KEEP GRADES SUFFICIENT FOR DRAINAGE, BUT NOT MORE THAN 2 TO 3 PERCENT.
3. PROVIDE SURFACE DRAINAGE AND DIVERT EXCESS RUNOFF TO STABILIZED AREAS.
4. MAINTAIN CUT AND FILL SLOPES TO 2:1 OR FLATTER AND STABILIZED WITH VEGETATION AS SOON AS GRADING IS ACCOMPLISHED.
5. SPREAD 6-INCH COURSE OF CRUSHED STONE EVENLY OVER THE FULL WIDTH OF THE ROAD AND SMOOTH TO AVOID DEPRESSIONS.
6. PROVIDE APPROPRIATE SEDIMENT CONTROL MEASURES TO PREVENT OFFSITE SEDIMENTATION.

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**CONSTRUCTION ROAD STABILIZATION**

**CONSTRUCTION SPECIFICATIONS**

1. ALL GRADED OR DISTURBED AREAS INCLUDING SLOPES SHALL BE PROTECTED DURING CLEARING AND CONSTRUCTION IN ACCORDANCE WITH THE APPROVED SEDIMENT CONTROL PLAN UNTIL THEY ARE PERMANENTLY STABILIZED.
2. ALL SEDIMENT CONTROL PRACTICES AND MEASURES SHALL BE CONSTRUCTED, APPLIED AND MAINTAINED IN ACCORDANCE WITH THE APPROVED SEDIMENT CONTROL PLAN AND THE "STANDARDS AND SPECIFICATIONS FOR SOIL EROSION AND SEDIMENT CONTROL IN DEVELOPING AREAS".
3. TOPSOIL REQUIRED FOR THE ESTABLISHMENT OF VEGETATION SHALL BE STOCKPILED IN AMOUNT NECESSARY TO COMPLETE FINISHED GRADING OF ALL EXPOSED AREAS.
4. AREAS TO BE FILLED SHALL BE CLEARED, GRUBBED, AND STRIPPED OF TOPSOIL TO REMOVE TREES, VEGETATION, ROOTS OR OTHER OBJECTIONABLE MATERIAL.
5. AREAS WHICH ARE TO BE TOPSOILED SHALL BE SCARIFIED TO A MINIMUM DEPTH OF FOUR INCHES PRIOR TO PLACEMENT OF TOPSOIL.
6. ALL FILLS SHALL BE COMPACTED AS REQUIRED TO REDUCE EROSION, SLIPPAGE, SETTLEMENT, SUBSIDENCE OR OTHER RELATED PROBLEMS. FILL INTENDED TO SUPPORT BUILDINGS, STRUCTURES AND CONDUITS, ETC. SHALL BE COMPACTED IN ACCORDANCE WITH LOCAL REQUIREMENTS OR CODES.
7. ALL FILL TO BE PLACED AND COMPACTED IN LAYERS NOT TO EXCEED 8 INCHES IN THICKNESS.
8. EXCEPT FOR APPROVED LANDFILLS, FILL MATERIAL SHALL BE FREE OF FROZEN PARTICLES, BRUSH, ROOTS, SOIL, OR OTHER FOREIGN OR OTHER OBJECTIONABLE MATERIALS THAT WOULD INTERFERE WITH OR PREVENT CONSTRUCTION OF SATISFACTORY FILLS.
9. FROZEN MATERIALS OR SOFT, MUCKY OR HIGHLY COMPRESSIBLE MATERIALS SHALL NOT BE INCORPORATED IN FILLS.
10. FILL SHALL NOT BE PLACED ON SATURATED OR FROZEN SURFACES.
11. ALL BENCHES SHALL BE KEPT FREE OF SEDIMENT DURING ALL PHASES OF DEVELOPMENT.
12. SEEPS OR SPRINGS ENCOUNTERED DURING CONSTRUCTION SHALL BE HANDLED IN ACCORDANCE WITH THE STANDARD AND SPECIFICATION FOR SUBSURFACE DRAIN OR OTHER APPROVED METHOD.
13. ALL GRADED AREAS SHALL BE PERMANENTLY STABILIZED IMMEDIATELY FOLLOWING FINISHED GRADING.
14. STOCKPILES, BORROW AREAS AND SPOIL AREAS SHALL BE SHOWN ON THE PLANS AND SHALL BE SUBJECT TO THE PROVISIONS OF THIS STANDARD AND SPECIFICATION.

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**LANDGRADING SPECIFICATIONS**

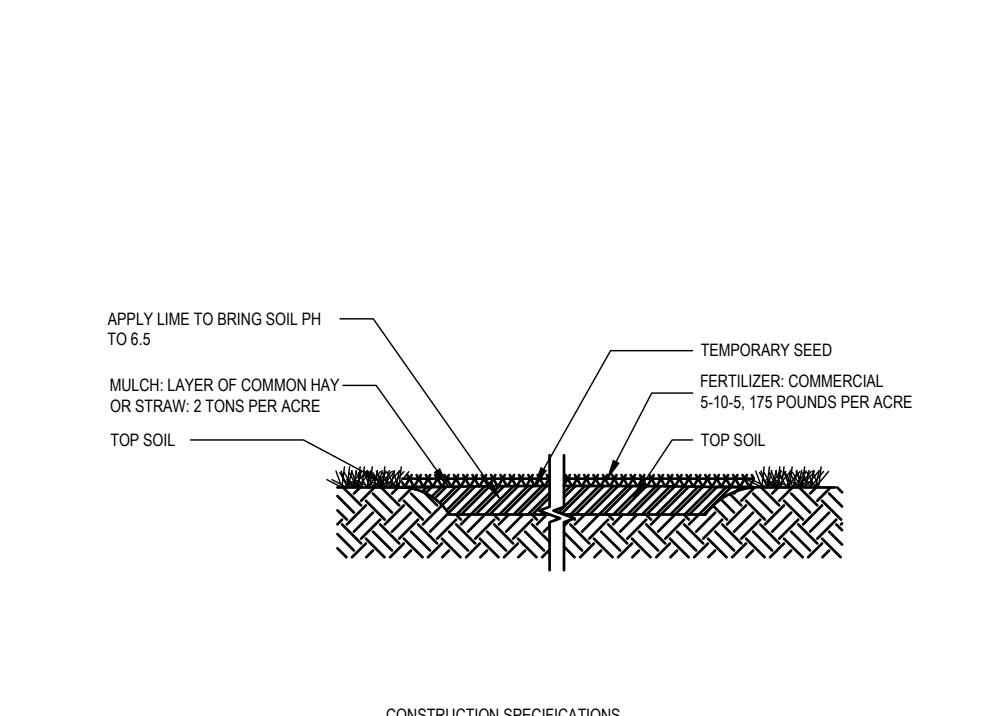
**PWGC**  
 CLIENT DRIVEN SOLUTIONS  
 P.W. GROSSER CONSULTING INC.

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**CONSULTANTS**

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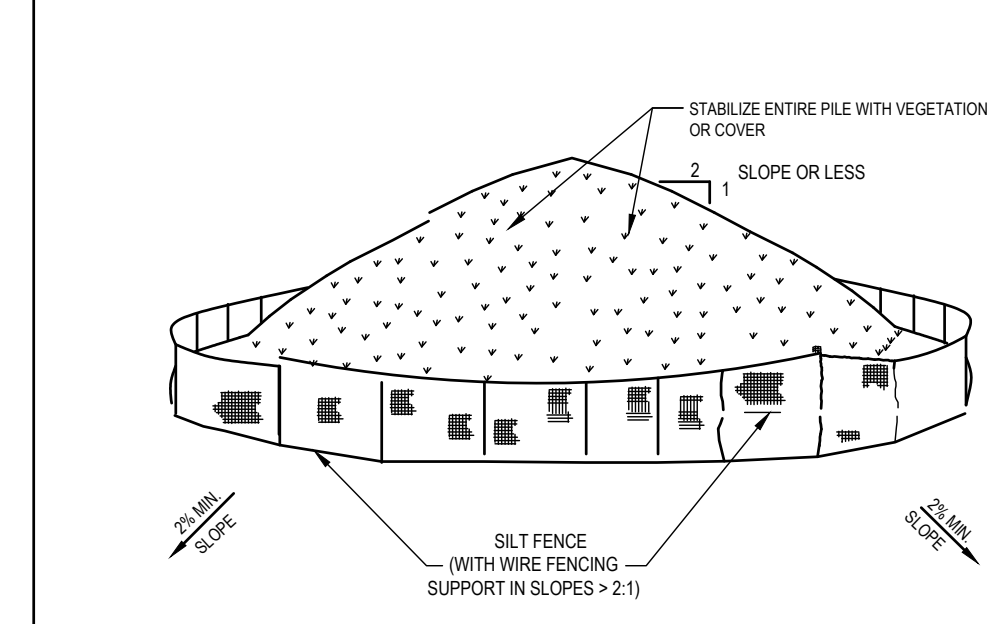
**FOR PERMITTING PURPOSES ONLY NOT FOR CONSTRUCTION**



- CONSTRUCTION SPECIFICATIONS**
1. TOP SOIL, SEED, MULCH, AND FERTILIZER DISTURBED SOIL AREAS THAT WILL BE EXPOSED FOR 14 DAYS OR MORE.

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**TEMPORARY TOPSOIL FERTILIZER, SEED AND MULCH DETAIL**



- INSTALLATION NOTES**
1. AREA CHOSEN FOR STOCKPILING OPERATIONS SHALL BE DRY AND STABLE.
  2. MAXIMUM SLOPE OF STOCKPILE SHALL BE 2:1.
  3. UPON COMPLETION OF SOIL STOCKPILING, EACH PILE SHALL BE SURROUNDED WITH EITHER SILT FENCING OR STRAWBALES, THEN STABILIZED WITH VEGETATION OR COVERED.
  4. SEE SILT FENCE DETAIL ABOVE.
  5. SILT FENCE TO BE 10' FROM TOE OF SLOPE AND 10' FROM PROPERTY LINES.

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**SOIL STOCK PILE DETAIL**

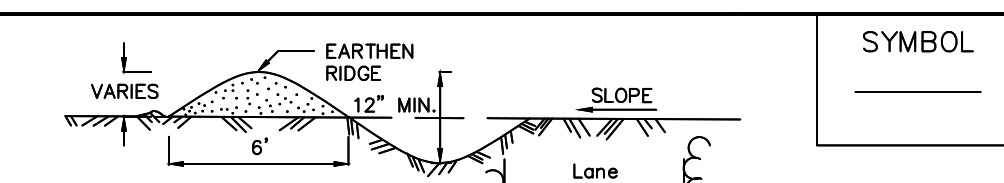
**SEEDING NOTE:**

1. ERNEST CONSERVATION SEEDS NORTHEAST POLLINATOR 3' MIX - ERNMX-612 TO BE SEEDED BELOW SOLAR PANELS. SEED AT 40 LB/AC WITH 30 LB/AC OF A COVER CROP. FOR A COVER CROP USE EITHER GRAIN OATS (1 JAN TO 31 JUL) OR GRAIN RYE (1 AUG TO 31 DEC).

NORTHEAST SOLAR POLLINATOR 3' MIX - ERNMX-612	
SHEEP FESCUE, VARIETY NOT STATED	94.90%
BUTTERFLY MILKWEED	2.50%
PARTRIDGE PEA, PA ECOTYPE	2.00%
SHOWY EVENING PRIMROSE	0.30%
ZIGZAG SPIDERWORT, VA ECOTYPE	0.30%

**WINTER SHUTDOWN CONSTRUCTION SCHEDULE**

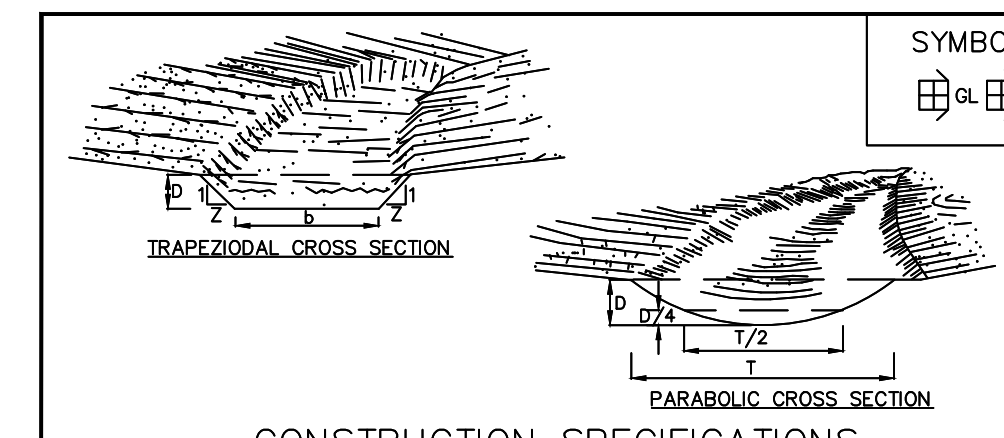
1. POST CLEARING THE EXPOSED SOIL SHALL BE COVERED WITH MATERIAL(S) AS SET FORTH IN THE TECHNICAL STANDARD. NEW YORK STANDARDS AND SPECIFICATIONS FOR EROSION AND SEDIMENT CONTROL, TO PREVENT THE EXPOSED SOIL FROM ERODING (SEE STANDARD AND SPECIFICATIONS FOR TEMPORARY CONSTRUCTION AREA SEEDING/STABILIZATION FOR WINTER SHUT DOWN, ABOVE).
2. REGULARLY INSPECT, MAINTAIN AND RE-SEED ANY AREAS THAT ARE NOT ADEQUATELY STABILIZED UP UNTIL THE JULY 1 START DATE AND THEREAFTER, UNTIL ALL DISTURBED AREAS ARE PERMANENTLY STABILIZED.
3. SITE INSPECTIONS ARE TO TAKE PLACE TWICE PER MONTH WITH PHOTOS PROVIDED TO THE TOWN TO DEMONSTRATE THAT THE SITE REMAINS STABILIZED/PROTECTED UNTIL CONSTRUCTION STARTS.
4. ONCE CONSTRUCTION STARTS, INSPECTIONS SHALL CONTINUE MONTHLY, WITH PHOTOS SUBMITTED TO THE TOWN, TO ENSURE THAT THE TEMPORARY STABILIZATION MEASURES REMAIN IN PLACE IN AREAS NOT UNDER ACTIVE CONSTRUCTION.



- CONSTRUCTION SPECIFICATIONS**
1. INSTALL THE WATER BAR AS SOON AS THE RIGHT OF WAY IS CLEARED AND GRADED.
  2. DISK OR STRIP THE SOD FROM THE BASE FOR THE CONSTRUCTED RIDGE BEFORE PLACING FILL.
  3. TRACK THE RIDGE TO COMPACT IT TO THE DESIGN CROSS SECTION.
  4. THE OUTLET SHALL BE LOCATED ON AN UNDISTURBED AREA. FIELD SPACING WILL BE ADJUSTED TO USE THE MOST STABLE OUTLET AREAS. OUTLET PROTECTION WILL BE PROVIDED WHEN NATURAL AREAS ARE NOT ADEQUATE.
  5. VEHICLE CROSSING SHALL BE STABILIZED WITH GRAVEL. EXPOSED AREAS SHALL BE SEEDED AND MULCHED WITHIN 2 DAYS.
  6. PERIODICALLY INSPECT WATER BARS FOR EROSION DAMAGE AND SEDIMENT. CHECK OUTLET AREAS AND MAKE REPAIRS AS NEEDED TO RESTORE OPERATION.

ADAPTED FROM DETAILS PROVIDED BY: USDA - NRCS, NEW YORK STATE DEPARTMENT OF TRANSPORTATION, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, NEW YORK STATE SOIL & WATER CONSERVATION COMMITTEE.

**WATER BARS**



- CONSTRUCTION SPECIFICATIONS**
1. ALL TREES, BRUSH, STUMPS, OBSTRUCTIONS, AND OTHER OBJECTIONABLE MATERIAL SHALL BE REMOVED AND DISPOSED OF SO AS NOT TO INTERFERE WITH THE PROPER FUNCTIONING OF THE WATERWAY.
  2. THE WATERWAY SHALL BE EXCAVATED OR SHAPED TO LINE, GRADE, AND CROSS SECTION AS REQUIRED TO MEET THE CRITERIA SPECIFIED HEREIN, AND BE FREE OF BANK PROJECTIONS OR OTHER IRREGULARITIES WHICH WILL IMPED NORMAL FLOW.
  3. FILLS SHALL BE COMPACTED AS NEEDED TO PREVENT UNEQUAL SETTLEMENT THAT WOULD CAUSE DAMAGE IN THE COMPLETE WATERWAY.
  4. ALL EARTH REMOVED AND NOT NEEDED IN CONSTRUCTION SHALL BE SPREAD OR DISPOSED OF SO THAT IT WILL NOT INTERFERE WITH THE FUNCTIONING OF THE WATERWAY.
  5. STABILIZATION SHALL BE DONE ACCORDING TO THE APPROPRIATE STANDARD AND SPECIFICATIONS FOR VEGETATIVE PRACTICES.
    - A. FOR DESIGN VELOCITIES OF LESS THAN 3.5 FT. PER SEC., SEEDING AND MULCHING MAY BE USED FOR THE ESTABLISHMENT OF THE VEGETATION. IT IS RECOMMENDED THAT, WHEN CONDITIONS PERMIT, TEMPORARY WATERWAYS OR OTHER MEANS SHOULD BE USED TO PREVENT WATER FROM ENTERING THE WATERWAY DURING THE ESTABLISHMENT OF THE VEGETATION.
    - B. FOR DESIGN VELOCITIES OF MORE THAN 3.5 FT. PER SEC., THE WATERWAY SHALL BE STABILIZED WITH SOD, WITH SEEDING PROTECTED BY SUE OR EXCELSIOR MATTING OR WITH SEEDING AND MULCHING INCLUDING TEMPORARY DIVERSION OF THE WATER UNTIL THE VEGETATION IS ESTABLISHED.
    - C. STRUCTURAL - VEGETATIVE PROTECTION SUBSURFACE DRAIN FOR BASE FLOW SHALL BE CONSTRUCTED AS SHOWN ON THE STANDARD DRAWING AND AS SPECIFIED IN THE STANDARD AND SPECIFICATIONS FOR SUBSURFACE DRAIN.

ADAPTED FROM DETAILS PROVIDED BY: USDA - NRCS, NEW YORK STATE DEPARTMENT OF TRANSPORTATION, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, NEW YORK STATE SOIL & WATER CONSERVATION COMMITTEE.

**GRASSED WATERWAY**

**SOLAR ARRAY**

**COMPANY, LLC**  
**24HR EMERGENCY CONTACT**  
**NAME, PHONE, ADDRESS**

**⚠ DANGER**

**HIGH VOLTAGE.**  
**KEEP OUT**

**SIGNAGE DETAIL**  
 NOT TO SCALE

- SIGNAGE NOTE:**
1. SIGNAGE SHALL BE DEPICTED WITH AN AREA NO MORE THAN 8 SQUARE FEET AND MUST HAVE A YELLOW BACKGROUND WITH BLACK LETTERS AND BE LOCATED NEAR PAD MOUNTED TRANSFORMERS/SUBSTATION, ON THE GATE OF THE PERIMETER FENCE, AND ALONG THE PERIMETER FENCE.

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1	CLIENT REVIEW	04/05/2024
Number	Revision Description	Revision Date
Designed By		Date Submitted
Drawn By	HLW	Date Created 03/28/2024
Approved By	MTS	Date
Client		AS NOTED

NY LANSING II, LLC  
 P.O. BOX 384  
 CALLICOON, NY 12783

**NORTH TRIPHAMMER ROAD SOLAR FARM CONCEPTUAL SITE PLAN**

Project Address:  
 NORTH TRIPHAMMER ROAD  
 TOWN OF LANSING  
 TOMPKINS COUNTY, NEW YORK

County Tax Map Number: 44-1-1.2 & 44-1-3.3  
 Regulatory Reference Number: ---  
 File of Drawing: ---

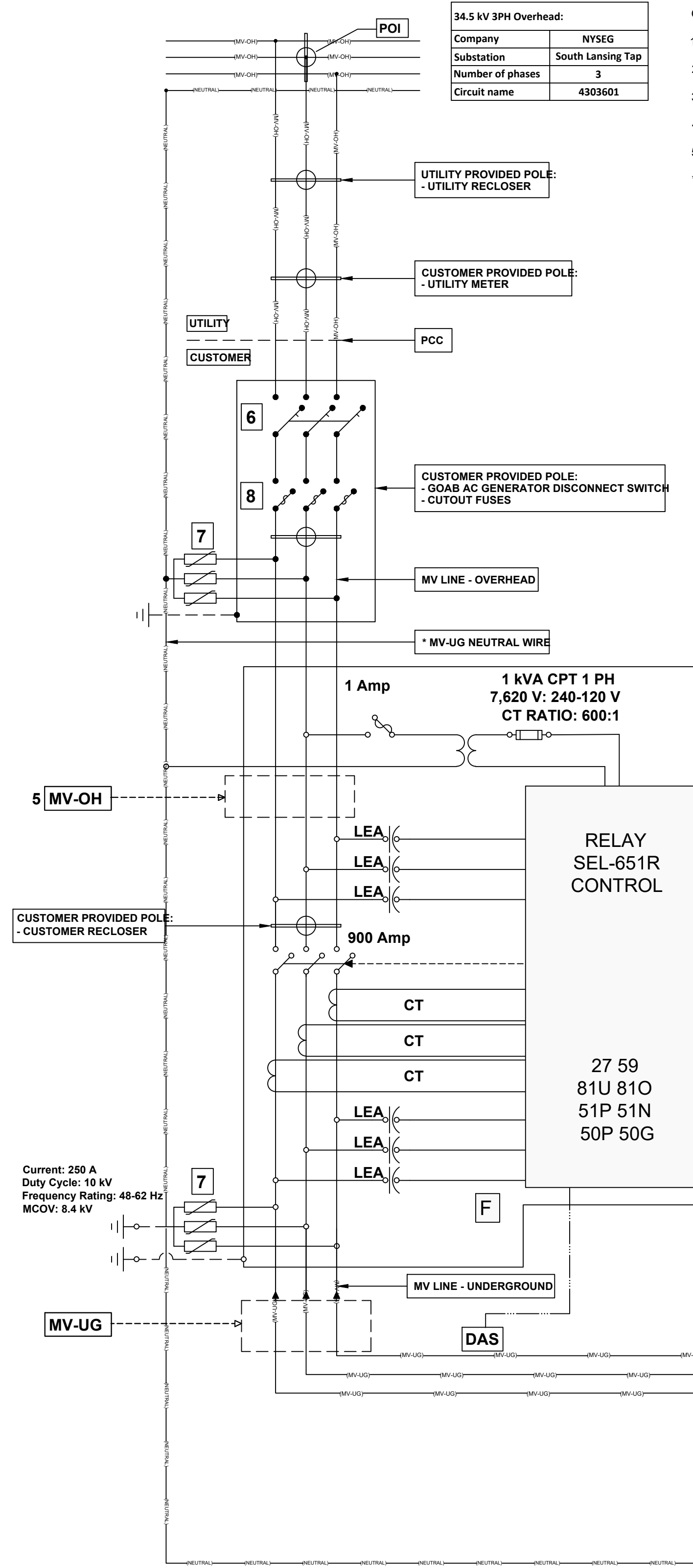
**EROSION AND SED. CONTROL DETAILS**

Drawing Number:  
**C-601**

Sheet  
 10 of 11  
 PWGC Project Number:  
**DRS2404**

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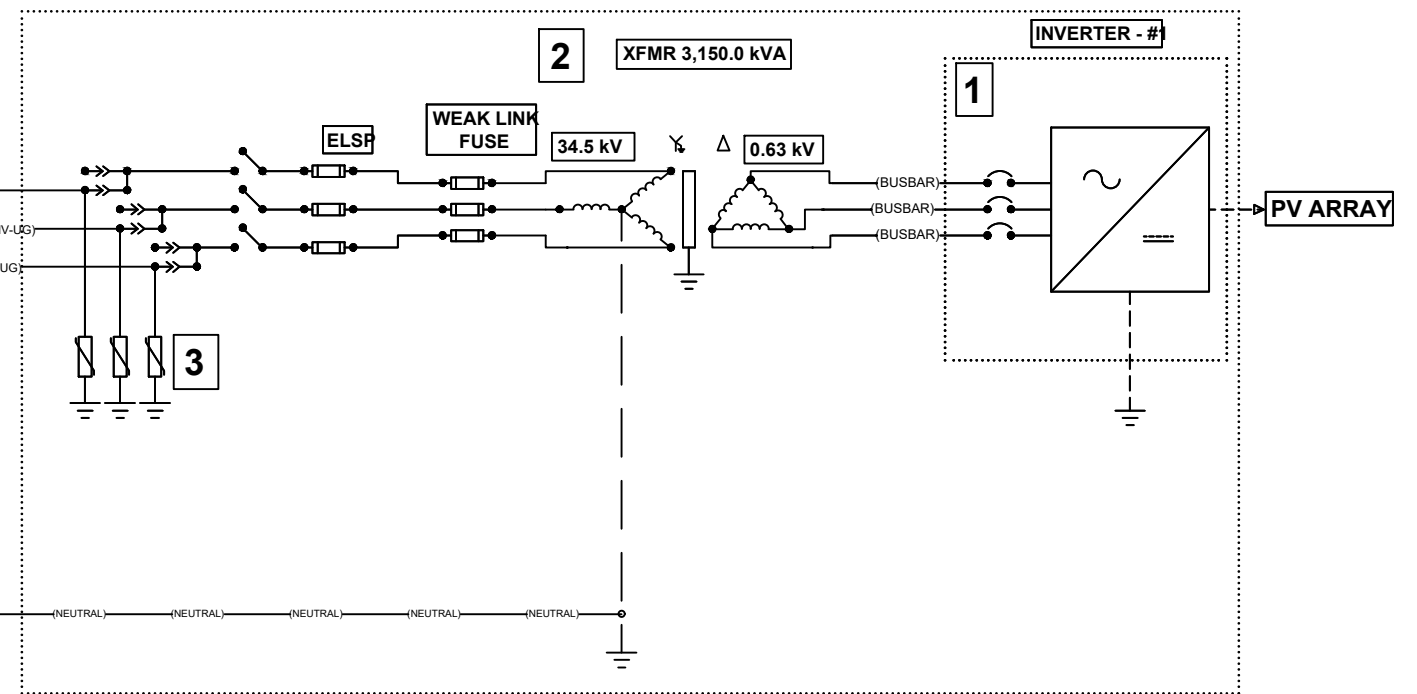


34.5 kV 3PH Overhead:	
Company	NYSEG
Substation	South Lansing Tap
Number of phases	3
Circuit name	4303601

GENERAL NOTES:

1. Only the main equipment manufacturers are indicated.
  2. The inverter power station integrates all the components in a compact outdoor assembly; Pad Mount Transformer and Other Equipment (Monitoring and Auxiliary Equipment).
  3. Ground resistance (Rg) will be at least 25 ohms.
  4. Pad Mount Distribution Transformer provided and installed by Customer. MV Cable, Meter pole, Cutout fuses and Disconnect Switch to be provided and installed by customer.
  5. UTILITY will make the final electrical connection from the CUSTOMER facilities to UTILITY facilities.
- \*This Neutral wire is only representative; the real neutral wire is concentric strands integrated in each phase wire.

INVERTER SETTINGS		
DEVICE	PICKUP	CLEARING TIME (SECONDS)
27-1	528.0 V (88%)	2.00
27-2	300.0 V (50%)	1.10
59-1	660.0 V (110%)	2.00
59-2	720.0 V (120%)	0.16
81U-2	56.6 Hz	0.16
81U-1	58.5 Hz	300.00
81O-1	61.2 Hz	300.00
81O-2	62 Hz	0.16



**ELECTRICAL THREE LINE DIAGRAM**  
NOT TO SCALE

VOLTAGE LINE (kV)	34.50
UTILITY	NYSEG
SUBSTATION	South Lansing Tap
NUMBER OF PHASES	3
CIRCUIT NAME	4303601
AC SYSTEM SIZE (MW)	3.00
POWER FACTOR	1.00
OUTPUT CURRENT (A)	50.20
AC SYSTEM SIZE (MVA)	3.00
1	
MANUFACTURER	Singrow
MODEL	SG150UD-MV
QUANTITY	1
MAX PV INPUT VOLTAGE (V)	1,500
AC POWER (kVA)	3,150
AC OUTPUT POWER (kW) (LIMITED)	3,000
AC OUTPUT VOLTAGE (V)	630
AC OUTPUT CURRENT (A)	2,886.75
UL 1741 AND IEEE 1547	YES
2	
MANUFACTURER	EATON
QUANTITY	1
POWER (kVA)	3,150
HV BIL (kV)	150
LV BIL (kV)	30
NOMINAL HIGH VOLTAGE (kV)	34.50
NOMINAL LOW VOLTAGE (V)	630
IMPEDANCE (%)	5.75
X/R Ratio	>=5
PRIMARY WINDING	WYE
SECONDARY WINDING	DELTA
3	
MANUFACTURER	EATON
MCOV RATING (kV)	22.00
DUTY CYCLE (kV)	27.00
4	
SIZE	2/D AWG
NORMAL TEMP RATING (°C)	105
JACKET	XLPE
CONCENTRIC NEUTRAL	100%
INSULATION LEVEL (%)	100
VOLTAGE RATING (kV)	35
LENGTH (ft)	2,590.15
5	
TYPE	ACSR
SIZE	1/D AWG
LENGTH (ft)	198.38
6	
MANUFACTURER	EATON
RATING (A)	600
VOLTAGE (kV)	15.5
BIL (kV)	200
7	
MANUFACTURER	EATON
QUANTITY	3
MCOV (kV)	22.00
ARRESTER RATING (kV)	27.00
8	
MANUFACTURER	S&C
RATING (kV)	35
RATING (A)	175
BIL (kV)	200
QUANTITY	3



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CONSULTANTS

FOR PERMITTING  
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Number	Revision Description	Revision Date
1	CLIENT REVIEW	04/05/2024

Designed By: \_\_\_\_\_ Date Submitted: \_\_\_\_\_  
 Drawn By: HLW Date Created: 03/28/24  
 Approved By: MTS Scale: AS NOTED

Client:  
**NY LANSING II, LLC**  
 P.O. BOX 384  
 CALLICOON, NY 12783  
 Project:  
**NORTH TRIPHAMMER ROAD  
 SOLAR FARM CONCEPTUAL  
 SITE PLAN**  
 Project Address:  
**NORTH TRIPHAMMER ROAD  
 TOWN OF LANSING  
 TOMPKINS COUNTY, NEW YORK**

County Tax Map Number: 44-1-1.2 & 44-1-3.3  
 Regulatory Reference Number: \_\_\_\_\_  
 Title of Drawing: \_\_\_\_\_

**ELECTRICAL  
THREE LINE  
DIAGRAM**

Drawing Number: **C-602**  
 Sheet 11 of 11  
 Project Number: DRS2404





**VAR-24-6**  
Zoning Variance  
Status: Active  
Submitted On: 4/9/2024

**Primary Location**  
0 N Triphammer Rd  
Lansing, NY 14850  
**Owner**  
Young, James & Young, John  
3105 N Triphammer Rd Suite  
1 Lansing, NY 14882

**Applicant**  
 mollie messenger  
 845-800-8914  
mollie.messenger@delawareriversolar.com  
 PO Box 384  
Callicoon, NY 12723

### Application Information

**Are you the property owner?\***

No

**Select the reason for this application:\***

Use Variance

**Have you applied for a building permit and had it denied?\***

No

**Select the provision that your request relates to:\***

Town of Lansing Zoning Code

**Identify the corresponding Town of Lansing Zoning Code Section:**

Section 503 Schedule I Solar Panel and Similiar alternative energy source commercial

For a listing of the Zoning Codes click here: [Town of Lansing Zoning Codes](#)

**Purpose of Request:\***

Solar Panel and Similiar alternative energy source commercial located in an R2 zone



**All Applicants for Variances shall please read the following:**

The Zoning Board of Appeals may grant Variances from the provisions of this Ordinance, only where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or where by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of a piece of property, or where by reason of other extraordinary or exceptional circumstances, the strict application of the requirements of this Ordinance would result in practical difficulties to, or undue hardship upon, the owner of this property, and further provided that this relief may be granted without substantially impairing the intent and purpose of this Ordinance. In granting a Variance, the Zoning Board of Appeals may attach such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable so that the purpose of this Ordinance will be served, public safety and welfare secured and substantial justice done.

**Incomplete Applications will not be considered.**

Applicant/Agent must be present at the Public Hearing. This application, accompanying fee and all supporting documents must be submitted no later than two (2) weeks prior to the date that the request is to be considered. See Schedule of Meetings at [www.lansingtown.com](http://www.lansingtown.com).

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## Agricultural Data Statement

Per § 305-a of the New York State Agriculture and Markets Law, any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval that would occur on property within a New York State Certified Agricultural District containing a farm operation or property with boundaries within 500 feet of a farm operation located in an Agricultural District shall include an Agricultural Data Statement.

**Description of the proposed project:\***

Solar Panel and Similiar alternative energy source commercial - 3 MW AC Solar Farm

**The project is located on property:\***

with boundaries within 500 feet of a farm operation located in an Agricultural District

**Number of acres affected by project:\***

14



Is any portion of the project site currently being farmed?\*

How many acres or square feet?\*

Yes

Approx 13 acres

Please include information about the existing land cover (crops or vegetation), any known impacts on existing stormwater drainage (including field tiles), or other significant plant materials:

Farm fields and woodlands with potential wetlan areas. No rare animal or plants on the site.

### Farm Note

Prospective residents should be aware that farm operations may generate dust, odor, smoke, noise, vibration and other conditions that may be objectionable to nearby properties. Local governments shall not unreasonably restrict or regulate farm operations within State Certified Agricultural Districts unless it can be shown that the public health or safety is threatened.

Signature of Applicant\*

✔ mollie messenger  
Apr 2, 2024



NY Lansing II, LLC  
33 Lower Main Street / PO Box 384  
Callicoon, NY 12723

Section 3, Item d.

April 9, 2024

Town of Lansing Building Department  
29 Auburn Road  
Lansing, New York 14882

Attn: Code Enforcement Officer  
C/O Scott Russell

Re: North Triphammer Road, South Parcel Project #2 - Solar Energy Facility

Dear CEO Russell,

The purpose of this letter is to request for the above reference application for a Use variance for NY Lansing I, LLC – Solar Energy Facility Project (“Project”) to be placed on the May 8<sup>th</sup> Zoning Board meeting agenda.

The site plan application materials are written specific to this project on parcel 44.-1-3.3 and a portion of 44-1-1.2 for the access road, and any zoning requirements listed in the code as required by the Town Solar Law.

Please be advised the Project Summary, Operation and Maintenance Plan and the Decommissioning Plan are draft documents that will need review and possible revision. The submission of those three documents are presented with both projects together as much of the information is the same for both projects. As we move through the review process, if you would like us to separate these documents for each project we will accommodate that request.

Included in this submission are the following items, per the Town website portal directives.

- The Project Cover Page and Project Summary or Narrative
- The Boundary Survey, T.G. Miller PC has been contracted to work on a lot line adjustment for these two parcels. A proposed survey will be presented to the Town in a future submission.
- The Memo of Lease provided to show written permission of the Property Owner
- Photos of the site have been provided from the Site Assessment Study.
- The deed has been provided.
- The title commitment letter has been provided showing easements and / or Covenants.
- A letter from HodgsonRuss has been provided as a response to the balancing questions and the Public Use Standard for determining variances.
- The Long EAF has been provided

In addition to those items requested please also review the additional attachments uploaded to the permit portal.

- The proposed Site Plan Set
- The Operations and Maintenance Plan
- The Draft Decommissioning Plan

Respectfully Submitted,



Mollie Messenger

Encs.  
Rich Winter, Chief Executive Officer



**Charles Malcomb**  
 Partner  
 Direct Dial: 716.848.1261  
[cmalcomb@hodgsonruss.com](mailto:cmalcomb@hodgsonruss.com)

**Alicia Stoklosa**  
 Associate  
 Direct Dial: 585.613.3943  
[astoklosa@hodgsonruss.com](mailto:astoklosa@hodgsonruss.com)

April 9, 2024

Town of Lansing Zoning Board of Appeals  
 Lansing Town Hall  
 PO Box 186  
 29 Auburn Road  
 Lansing, New York 14882

To: Members of the Zoning Board of Appeals

Re: Proposed Solar Energy Facilities on North Triphammer Road

Our firm represents NY Lansing I, LLC and NY Lansing II, LLC, affiliates of Delaware River Solar (“Applicant”), in connection with its efforts to develop one five (5) megawatt and one three (3) megawatt alternating current (“MWac”) solar energy facilities (“Project”) located on two neighboring parcels of land on North Triphammer Road, tax map numbers 44.-1-1.2 and 44.-1-3.3 (“Property”), in the Town of Lansing, New York (“Town”). The Property is located in the Town’s R-2 Moderate Density (“R-2”) Zoning District.

This letter is in support of the Applicant’s use variance application (“Application”). The Application is being submitted to the Town of Lansing Zoning Board of Appeals (“ZBA”) to allow the Project on the Property<sup>1</sup>. Because solar energy facilities are public utilities for zoning and land use purposes, the Application is reviewed pursuant to the use variance standard applicable to public utilities, rather than the use variance test under N.Y. Town Law § 267-b(2).

**I. The Application is reviewed pursuant to the variance standard applicable to public utilities.**

The Court of Appeals in *Consolidated Edison Co. of New York, Inc. v. Hoffman*, 43 N.Y.2d 598 (1978) (“*Hoffman*”) held that public utilities are subject to an alternative standard when seeking a use variance. The *Hoffman* case involved the proposed addition of a 565-foot wet cooling tower at the Indian Point nuclear plant operated by Consolidated Edison (“Con Ed”) to mitigate the negative environmental impacts on the Hudson River from its prior cooling system.

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<sup>1</sup> Section 270, Attachment 1, Schedule 1: Schedule of Land Uses or Activities, of the Town of Lansing Town Code (“Town Code”) indicates that Solar Energy Facilities, as that term is defined in the Town Code, are permitted only in the Town’s Industrial/Research (“IR”) zoning district.



After Con Ed’s building permit application was denied on the grounds that the tower exceeded the 40-foot building height limit in the zoning district and would result in prohibited uses, Con Ed sought a variance from the Village of Buchanan Zoning Board of Appeals (“Buchanan ZBA”). The Buchanan ZBA denied the application, finding that Con Ed had not shown any practical difficulties requiring the variance, had not demonstrated it was the minimal variance necessary, and failed to adequately consider alternatives.

Once this denial was challenged and made its way to the Court of Appeals, the Court determined that although the traditional approach is to require an applicant for a variance to demonstrate an unnecessary hardship,<sup>2</sup> such showing is “not appropriate where a public utility such as Con Edison seeks a variance, since the land may be usable for a purpose consistent with the zoning law, the uniqueness may be the result merely of the peculiar needs of the utility, and some impact on the neighborhood is likely.” *Hoffman*, 43 N.Y.2d at 607. Instead, utilities can demonstrate entitlement to a variance by showing that the proposed “modification is a public necessity ... required to render safe and adequate service[.]” *Id.* at 610 (internal citations omitted). And, “where the intrusion or burden on the community is minimal” the Court determined that the requisite showing “should be correspondingly reduced.” *Id.*

Since the *Hoffman* case, application of the alternative standard for public utility uses in the context of local land use approvals has been expanded given the more inclusive definition of a public utility developed by the Court of Appeals in *Cellular Tel. Co. v. Rosenberg*, 82 N.Y.2d 364 (1993) (“*Rosenberg*”). There, the Court defined “public utility” as

“‘a private business, often a monopoly, which provides services so essential to the public interest as to enjoy certain privileges such as eminent domain and be subject to such governmental regulation as fixing of rates, and standards of service.’ Characteristics of the public utility include (1) the essential nature of the services offered which must be taken into account when regulations seek to limit expansion of facilities which provide the services, (2) ‘operat[ion] under a franchise, subject to some measure of public regulation,’ and (3) logistic problems, such as the fact that ‘[t]he product of the utility must be piped, wired, or otherwise served to each user \* \* \*[,] the supply must be maintained at a constant level to meet minute-by-minute need[, and] [t]he user has no alternative source [and] the supplier commonly has no alternative means of delivery.’”

*Rosenberg*, 82 N.Y.2d 371 (internal citations omitted).

This much broader definition has resulted in application of the variance standard articulated in *Hoffman* to siting facilities, rather than just modifications or expansions to existing facilities, and to less “traditional” public utilities such as cellular telephone companies and

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<sup>2</sup> This requires the applicant to demonstrate that the property cannot yield a reasonable return if used for a permitted use, that the circumstances causing the hardship are unique to the subject property, and that the proposed use will not alter the essential character of the neighborhood. *Hoffman*, 43 N.Y.2d at 607.



renewable energy projects. See *Rosenberg*, 82 N.Y.2d 372 (The *Hoffman* case “applies to entirely new siting of facilities, as well as the modification of existing facilities.”). Based on the reasoning in this line of cases, New York courts have annulled variance denials for renewable energy projects based on Town Law § 267-b, and remanded such applications to local ZBA’s for review under the public utility variance standard. See *Delaware River Solar, LLC, et al. v. Town of Aurora Zoning Bd. of Appeals*, Index No. 808123/2022 (Sup. Ct. Erie Cty. Nov. 7, 2022); see also *Cipriani Energy Grp. Corp. v. Zoning Bd. of Appeals of the Town of Minetto, New York et al.*, EFC-2022-0043 (Sup. Ct. Oswego Cty. Apr. 12, 2022) (“[*Rosenberg*] directly applies to this situation and compels the determination as a matter of law that Cipriani [a solar developer] is a public utility.”); *Freepoint Solar LLC and FPS Potic Solar LLC v. Town of Athens Zoning Bd. of Appeals*, EF2021-795 (Sup. Ct. Greene Cty. Aug. 18, 2022) (vacated local ZBA’s denial of a use variance under Town Law § 267-b for failing to apply the use variance test under *Hoffman*). Zoning Boards of Appeal have also applied the public utility variance standard to variance applications submitted for solar energy facilities as a matter of course. See *Town of Binghamton Zoning Bd. of Appeals Decision*, dated June 14, 2022 (applying the public utility variance standard to a community solar developer and granting a use variance); see *Town of Oswego Zoning Bd. of Appeals Resolution*, dated Jan. 19, 2023 (“the Applicant ... further addressed the applicable use variance criteria the Courts of this State have applied to renewable energy projects ... declaring such projects to be public utilities and thus reviewable under the less-restrictive *Hoffman* standard of review, which was recently applied by the New York State Supreme Court in a legal proceeding involving the neighboring Town of Minetto ... the Project is a public utility and thus is afforded the standard of review for a [] variance articulated in *Hoffman*[] ... By its very nature, clean energy is a public necessity as proclaimed by the State of New York in its Clean Energy Standard and further codified in the Climate Leadership and Community Protection Act[.]”). These decisions are attached hereto as **Exhibit A**.

As in the above cases, this Project meets each one of the *Rosenberg* factors. Firstly, the Project will be owned by NY Lansing I, LLC and NY Lansing II, LLC, affiliates of Delaware River Solar—a private solar energy company that operates to provide clean, renewable electricity to the grid for consumers. Further, it cannot be argued that electricity is not essential to our everyday life. As former U.S. Secretary of Energy Hazel O’Leary said, “[e]lectricity is just another commodity in the same way that oxygen is just another gas.”<sup>3</sup> Second, the Project will be subject to “regulation and supervision” by the Public Service Commission (“PSC”) because it will generate electricity. See *W. Beekmantown Neighborhood Ass’n, Inc. v. Zoning Bd. of Appeals of Town of Beekmantown*, 53 A.D.3d 954, 956 (3d Dep’t 2008) (citing N.Y. PUB. SERV. LAW §§ 2(2–b), (12), (23); § 5(1)(b); § 66–c). The Project will be an integral part of the electricity generation and transmission system, generating clean, renewable energy and distributing it to consumers through the electric grid—a utility in its own right, subject to significant public regulation. And even though the more modern utility model has decoupled generation and transmission, companies that generate electricity for sale to consumers through the State’s transmission system are still treated as public utilities. Specifically, as a community solar development, installation and operation of the Project will be subject to the provisions of the PSC’s “New York State

<sup>3</sup> Quoted in Ralph Cavanagh, “Restructuring for Sustainability: Toward New Electric Service Industries,” *Electricity Journal* (July 1996): 71.



Standardized Interconnection Requirements and Application Process for New Distributed Generators and Energy Storage Systems 5MW or Less Connected in Parallel with Utility Distribution Systems.” See N.Y. PUB. SERV. COMM’N, Case 15-E-0082, *Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions For Implementing a Community Net Metering Program*.

Lastly, the product—electricity—can only be distributed by way of the electric grid. There is no other feasible method for an electricity generator to deliver electricity to consumers. Both the generator and the consumer are beholden to the transmission system to send and receive electricity service, and because of the ever-present demand for power, adequate supply must be maintained at all times. Further, there are significant logistical constraints in siting solar projects. Most properties in a municipality are not economically feasible for solar development. The size and layout of the parcel have to be at such a scale to accommodate the project, which often cannot be reduced to fit a smaller property given that solar projects are only economically feasible at a certain size. The property must also be located near existing utility infrastructure—namely, transmission lines and a substation—in order to interconnect the project to the utility grid. Without these crucial pieces, a solar project simply could not go forward. There is also the question of topography of the site and solar access. Installation of solar panels is significantly more expensive on certain challenging terrain (*e.g.*, excessive wetlands and steep slopes). And access to sunlight at the site as it exists, without having to modify it at exponential cost, is similarly crucial. Lastly, community solar sites are often leased, making it challenging to find a willing property owner.

Here, the Property was carefully selected to meet the needs of a community solar project. The Applicant began its search for an adequate project site by evaluating the capacity of the New York State Electric and Gas (“NYSEG”) Substation network. Once it was confirmed that this system had excess capacity, the Applicant began looking for available parcels. The Applicant initially identified more than two dozen parcels located in the IR zoning district (where Solar Energy Facilities are permitted with special conditions), which were then further analyzed to determine if they met certain criteria tied to lot size, slopes, and the presence of wetlands, waterbodies, and extensive tree coverage. The Applicant was forced to eliminate half of the identified parcels as these landowners were not interested in leasing or selling their land for the Project. The Applicant and its consultants then reviewed the remaining potential parcels for topography, slope, and elevation data; the New York State Department of Environmental Conservation (“NYSDEC”) and the U.S. Fish & Wildlife Service National Wetlands Inventory (“NWI”) data to identify any mapped wetlands onsite; applied local zoning requirements to the identified parcels to determine useable acreage; evaluated expected substation and feeder capacity; and assessed any substation upgrades that would be required by the Project. The remainder of the potential parcels were eliminated because they are either too far (several miles) from the applicable NYSEG substation, they do not have topography suited for the Project, or the available developable area is too small to accommodate the Project. In addition, several of the potential parcels have extensive wetland areas or house current gravel mining operations, which would not afford sufficient developable area on each parcel for the Project. This extensive analysis identified the Property as the only ideal candidate for the Project. The Applicant then entered into a lease agreement with the landowners for part of the Property to develop a community solar facility. The Applicant and the landowner consider the Project to be the best and highest use for their land,

allowing for renewable energy benefits, tax payments to the Town, and an income stream for the Property owners for generations to come. Additional information regarding the parcels that the Applicant explored for the Project in the IR zoning district is attached hereto as **Exhibit B**.

The roughly 66-acre Property is comprised of relatively flat land, which provides sufficient area to build and maintain a Solar Energy Facility without needing to heavily modify the site. This avoids any additional financial burden that would otherwise be passed on to energy consumers, or which would simply prohibit development of the Project. The Property is also near the point of interconnection (“POI”) (*i.e.*, where the Project physically connects to the NYSEG transmission system)—a necessary piece of the puzzle where the Applicant connects the Project to the grid in order to transmit the power to consumers. This proximity to the POI allows the Applicant to interconnect to the grid directly from the Property, without intruding on any neighboring properties. And, NYSEG has verified that both the feeder and substation have enough available capacity to accommodate a project of this size at a reasonable cost. Finding suitable land with available interconnection capacity is often the most challenging aspect of siting solar energy systems, since capacity is scarce and the costs to interconnect a solar project can be prohibitive. In this case, these criteria were met.

This unique combination of site characteristics provides an opportunity to build an economically feasible Solar Energy Facility on a relatively small project site. The eastern and southern property lines border largely vacant, undeveloped land. The northern and western property lines border minimal residential development and will be buffered by to be installed vegetative screening. Lastly, the Project will not negatively impact any agricultural soils onsite, which will instead be seeded with a pollinator mix and be allowed to lie fallow for the life of the Project. As such, the Property is well-suited for a solar project of this scale.

**a. The Project meets the public utility standard.**

The Project is a public utility use, and a request for a use variance for the Project is reviewed under the variance standard articulated in *Hoffman*.<sup>4</sup> This only requires a showing that the Project is a public necessity, needed to provide safe and adequate service. As stated above, electricity generation is undeniably a necessity. There is a public necessity for the Project, which will provide extensive public benefits: (a) the development of the Project will generate local, county, and school tax revenue while not increasing demand on Town infrastructure; (b) energy generated from the Project will be distributed to the utilities’ electrical grid and will directly benefit utility customers (residential and/or small businesses) enrolled in the “community solar program”

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<sup>4</sup> Courts that have considered the question have determined that a renewable energy project is a public utility. See *W. Beekmantown Neighborhood Ass’n, Inc. v. Zoning Bd. of Appeals of Town of Beekmantown*, 53 A.D.3d 954, 956 (3d Dep’t 2008) (where the Third Department upheld the ZBA’s determination that wind turbines were a “public utility” under the zoning law); see also *Wind Power Ethics Group (WPEG) v. Zoning Bd. of Appeals of Town of Cape Vincent*, 60 A.D.3d 1282, 1283 (4th Dep’t 2009) (where the Fourth Department upheld the ZBA’s classification of a series of wind-powered generators as a utility within the meaning of the zoning law which defined a utility as “telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities.”).



via a discount; and (c) residential customers will have the option to source solar energy which they may not have the capital to generate on their own.

Moreover, the Project will assist the State to achieve its aggressive climate goals, which have not yet been achieved. The Climate Leadership and Community Protection Act (“CLCPA”) outlines interrelated climate mandates, including: “to reduce greenhouse gas emissions from all anthropogenic sources 100% over 1990 levels by the year 2050, with an incremental target of at least a 40% reduction in climate pollution by the year 2030.”<sup>5</sup> To date, the State has not met all mandates imposed by the CLCPA. The State still needs 20 GW of new renewable generation and transmission to meet the 2030 goals—meaning, the “State will have to increase the rate at which renewable electricity projects are permitted and approved for interconnection to the State electric grid as over the last 20 years the State has only added 12.9 gigawatts of projects of both renewable and fossil projects.”<sup>6</sup> This has created an additional public need for increased renewable energy generation siting throughout the State.

**b. The Project presents little to no burden on the community.**

Further, as noted in *Hoffman*, where there is little to no burden on the community, the requisite showing from the utility is correspondingly reduced. Here, the Project will not present any significant burden on the community, but will instead be a safe, quiet, clean generator of electricity. The Project is proposed to be sited in a mixed-use area of minimal residential and rural uses, surrounded largely by open, undeveloped land, as well as residential properties. The Project is proposed to be sited on parcels of land that back up to a large area of vacant, undeveloped land. There is a vegetative buffer between where the solar panels will be on the Project Site and the minimal residential properties to the north and southwest of the solar panel area, and the Project abides by all Town required setbacks. The Property is undeveloped, with no public water or sewer facilities—and no municipal water or sewer facilities will be required for the Project—making the Property more suitable for a community solar project than residential development. Once constructed, the Project will have negligible impacts to traffic in the area, as the Project will only be visited a few times per year for routine maintenance and inspections. The landowner prefers development of a temporary community solar farm over a permanent development on the land, but without the Project, much more intensive permanent land uses—like housing developments—are possible. Lastly, the Applicant submitted a Full Environmental Assessment Form (“FEAF”) Part I as part of its initial application, as required by the State Environmental Quality Review Act (“SEQRA”), which indicated that the Project will not result in stormwater impacts, will not significantly impact wetlands or waterbodies, will not create a new demand for water or energy or generate wastes, will not generate air emissions or noise once installed, will not result in any traffic impacts, and will not impact a designated significant natural community or critical environmental area. *See* FEAF Part I, dated April 5, 2024. Thus, the Applicant is seeking to convert unused land

<sup>5</sup> S.6599, Reg. Sess. (N.Y. 2019) (Relates to the New York state climate leadership and community protection act) at § 2(a).

<sup>6</sup> N.Y.S. COMPTROLLER, *Renewable Electricity in New York State, Review and Prospects* (Aug. 2023) at 5; *see also* NYISO, *Short-Term Assessment of Reliability: 2023 Quarter 2* (July 2023) at 29.

to an economically beneficial site with zero emissions, fumes, or odors, no traffic impacts, and little to no noise above background levels.

Moreover, the Project actually presents *net benefits* to the community. As noted above, because the Applicant is proposing a community solar project, residents and local businesses can use the electricity generated from the Project at a lower cost. They would receive electricity from the transmission utility (*i.e.*, NYSEG) in the same manner as they do now, but with a discount—and the added benefit of knowing it is being generated from a renewable source in their own neighborhood. Lastly, the installation, operation, and removal of the Project will impact the land and subsequent future uses to a lesser extent than would other current land use options. The solar posts are pile driven or screwed in place, creating minimal disturbance during installation. The racking system that holds the solar panels is elevated off the ground, leaving the area under and between the solar arrays as grassland or meadow ecosystems, planted with native grasses and pollinator species to benefit a host of wildlife. After construction, soils on site will not be disturbed, but will instead be left fallow to build organics and other important soil components overtime. Disturbance to the land that would need to be restored upon decommissioning is generally limited to removal of the panels along with their racking and posts, and any installed concrete pads for inverters or other similar equipment. The access road will be removed, unless the owner requests otherwise. And, pursuant to the terms of the lease, the landowner has the option to terminate the Project after its initial useful life. At such time, the Applicant (then the Project Operator) must decommission the Project, remove all components, and restore the land to a future use deemed acceptable by the landowner and Town. This decommissioning work will be ensured by a security instrument held by the Town, in an amount deemed acceptable to the Town.

## II. Conclusion

Given the facts presented above, the Applicant respectfully requests that the ZBA find the Project to be a public utility use and grant the requested use variance allowing the Project on the Property, as it meets the variance standard for public utilities under New York law.

We thank you for your consideration of this letter and request. If you have any questions or concerns, please do not hesitate to contact me at (585) 613-3943 or [astoklosa@hodgsonruss.com](mailto:astoklosa@hodgsonruss.com).

Very truly yours,



Alicia R. Stoklosa



AST  
Enclosure

cc: Kelly Geiger, Planning Clerk, Town of Lansing (*via email*)  
Mollie Messenger, Delaware River Solar (*via email*)

# Exhibit A



STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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DELAWARE RIVER SOLAR, LLC, NY AURORA I, LLC, NY  
AURORA II, LLC,

Petitioners,

For Judgment Pursuant to Article 78 of the CPLR and for a  
Declaratory Judgment Pursuant to CPLR 3001

Index No.: 808123/2022  
Hon. Craig. D. Hannah

-against-

TOWN OF AURORA ZONING BOARD OF APPEALS,

Respondent.

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**ORDER AND JUDGMENT**

**WHEREAS**, Petitioners DELAWARE RIVER SOLAR, LLC, NY AURORA I, LLC, NY AURORA II, LLC (together, "Petitioners"), commenced this combined Declaratory Judgment action and CPLR Article 78 proceeding by filing a Notice of Petition and Verified Petition, with exhibits, on July 18, 2022, seeking an order and judgment annulling the determination of the Town of Aurora Zoning Board of Appeals ("Respondent"), declaring Petitioners to be a public utility for purposes of reviewing their use variance application, ordering Respondent to issue the use variance for Petitioners' proposed project pursuant to the public utility use variance standard, and awarding Petitioners attorneys' fees under Section 107 of the Public Officers Law; and

**WHEREAS**, upon reading and considering (1) Petitioners' Notice of Petition, dated July 18, 2022 [Doc. 5]; (2) Petitioners' Verified Petition, with exhibits, dated July 18, 2022 [Docs. 1-5]; (3) Petitioners' Memorandum of Law in Support of the Verified Petition, dated

August 24, 2022 [Doc. 11]; (4) the Affirmation of Charles W. Malcomb, Esq. in Support of the Verified Petition, with exhibits, dated August 24, 2022 [Docs. 12,13]; and (5) the Affidavit of Peter Dolgos in Support of the Petition, dated August 24, 2022 [Doc. 14]; and

**WHEREAS**, upon reading and considering (6) The Certified Transcript of Proceedings dated September 2, 2022 [Doc. 15]; (7) Respondent's Verified Answer with Objections in Point of Law, dated September 28, 2022 [Doc. 16]; and (8) Respondent's Memorandum of Law in Support of the Answer with Objections in Points of Law of Town of Aurora Zoning Board of Appeals, dated September 28, 2022 [Doc. 17]; and

**WHEREAS**, upon reading and considering (9) Petitioners' Memorandum of Law in Reply, dated October 5, 2022 [Doc. 18]; and

**WHEREAS**, the Court hearing oral argument on October 12, 2022, and appearances having been made by Hodgson Russ LLP (Charles W. Malcomb, Esq. and Alicia R. Legland, Esq.) on behalf of Petitioners and Lippes Mathias LLP (Jennifer C. Persico, Esq.) on behalf of Respondent; and

**WHEREAS**, the Court having issued rulings on October 12, 2022 on the above and the transcript of said ruling is annexed hereto as **Exhibit A**, and

**NOW**, upon all of the pleadings, affidavits, papers, and proceedings had herein, and deliberation having been had thereon, it is hereby:

**ORDERED, ADJUDGED, AND DECREED** that Petitioners' Verified Petition filed on July 18, 2022 is hereby granted in part, and denied in part; and it is further



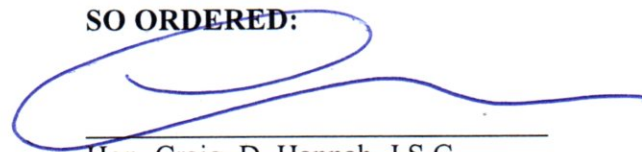
**ORDERED, ADJUDGED, AND DECREED** that the determination of the Town of Aurora Zoning Board of Appeals is hereby annulled; and it is further

**ORDERED, ADJUDGED, AND DECREED** that Petitioners' use variance application for the proposed solar energy facility is hereby remanded to Respondent for consideration pursuant to the public utility use variance standard as articulated in *Consolidated Edison v. Hoffman*, 43 N.Y.2d 598 (1978); and it is further

**ORDERED, ADJUDGED, AND DECREED** that Petitioners' request for attorneys' fees pursuant to Section 107 of the Public Officers Law is hereby denied.

**SO ORDERED:**

*Dated: November 7, 2022*



Hon. Craig. D. Hannah, J.S.C.

**GRANTED:**

**FILED: ERIE COUNTY CLERK 11/14/2022 12:07 PM**  
**FILED: ERIE COUNTY CLERK 10/21/2022 01:30 PM**

NYSCEF DOC. NO. 20

INDEX NO. 808123/2022  
INDEX NO. 808123/2022  
RECEIVED NYSCEF 11/14/2022  
RECEIVED NYSC Section 3, Item d.

# EXHIBIT A



1 STATE OF NEW YORK : SUPREME COURT  
2 COUNTY OF ERIE : PART 31

3 DELAWARE RIVER SOLAR, LLC,  
4 NY AURORA I, LLC,  
5 NY AURORA II, LLC,

6 Petitioners,

7 -vs- Index No. 808123/2022

8 TOWN OF AURORA ZONING BOARD OF APPEALS,

9 Respondent.

10 Buffalo City Court Building  
11 50 Delaware Avenue  
12 October 12, 2022

13 B e f o r e:

14 HONORABLE CRAIG D. HANNAH  
15 SUPREME COURT JUSTICE

16 A p p e a r a n c e s:

17 CHARLES W. MALCOMB, II, ESQ.,  
18 Appearing for the Petitioners via Teams

19 JENNIFER PERSICO, ESQ.,  
20 Appearing for the Respondent via Teams

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1 THE COURT: Okay. Thank you both. I  
2 appreciate both of your arguments and I think you both  
3 made some very interesting and very concise points. I'm  
4 going to follow the ruling from Consolidated Edison  
5 versus Hoffman. I do agree with Miss Persico it is not  
6 our job to supplant the Zoning Board of Appeals. Our job  
7 is to make sure that the right standard was followed.  
8 So, I'm going to grant the Petitioners' application in  
9 part. I'm going to annul and set aside the initial  
10 ruling and send it back to the Town of Aurora to consider  
11 the public use standard variance. I'm not going to grant  
12 attorneys fees, so that part of the application will be  
13 denied. And that's the ruling of the Court. Could one  
14 of you prepare an order and circulate it and submit it to  
15 me.

16 MR. MALCOMB: I can take care of that, Your  
17 Honor. I'll submit a proposed order to respondent's  
18 counsel before I submit it to the Court.

19 THE COURT: My clerk would like for it to be  
20 exchanged and submitted to the Court within ten days.  
21 All right. Thank you both.

22 MS. PERSICO: Thank you.

23 MR. MALCOMB: Thank you, Your Honor.

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C E R T I F I C A T I O N

The above is certified to be a true and correct transcript of the testimony.

*Kim M. Haettich*  
KIM M. HAETTICH  
Official Court Reporter

**STATE OF NEW YORK  
SUPREME COURT : COUNTY OF OSWEGO**

**CIPRIANI ENERGY GROUP CORP.,**

**Petitioners**

**JUDGMENT**

**For Judgment Pursuant to Article 78 of the  
CPLR and for a Declaratory Judgment,  
Pursuant to the CPLR**

**Index No.: EFC-2022-0043**

**v.**

**ZONING BOARD OF APPEALS OF THE  
TOWN OF MINETTO, NEW YORK, ROB  
RAMSEY in his official capacity as Code  
Enforcement Officer of the Town of Minetto,  
New York and TOWN OF MINETTO,  
NEW YORK,**

**HON. GREGORY R. GILBERT JSC**

**Respondents.**

**Appearances:** Daniel A. Spitzer, Esq.  
Hodgson Russ LLP  
Attorneys for Petitioners  
140 Pearl Street, Ste. 100  
Buffalo, New York 14202-4040

Christopher J. Baiamonte, Esq.  
The Wladis Law Firm, PC  
Attorneys for Respondents  
PO Box 245  
Syracuse, New York 13214

**BACKGROUND**

This Article 78 Petition seeks to annul findings by the Town of Minetto Zoning Board of Appeals; directing the Town Code Enforcement Officer to stop requiring a use variance; and declaring that petitioner is a public utility. The issues pertain to plans by Cipriani Energy Group Corp. ("Cipriani") to build a solar energy project on lands to which it is holder of a purchase option agreement located in the Town. The Town Code Enforcement Officer ("CEO") determined that a variance was required and the application for the same was denied by the Town Zoning Board of Appeals ("ZBA"). Cipriani alleges that this contravenes the Town's Local Law No. 3 of 2020.

The land in question is zoned R-10 and R-20. As set forth by the petition, the project is for the construction and operation of a 4.5 megawatt solar energy facility classified as a large solar energy system under Section 107 of the Zoning Code. Cipriani submitted a site plan application on March 9, 2021 and a Unified Solar Permit on April 6, 2021. In response, the CEO determined that a use variance would be required. Cipriani filed an appeal to the ZBA under Zoning Code 302(1) requesting an interpretation in the matter on May 25, 2021. The matter was tabled for further review by the ZBA at a meeting on July 22, 2021 and eventually decided on December 14,



2021 with the ZBA making determination that Cipriani would be required to seek a variance for the project. The ZBA made no determination as to the status of Cipriani as a public utility.

The matter was argued before the Court via Microsoft Teams on March 17, 2022 with counsel as indicated above appearing for the parties.

### DISCUSSION

The question presented is whether the determination by the ZBA was made in violation of lawful procedure, affected by error of law, arbitrary or capricious or an abuse of discretion. Jackson v. New York State Urban Development Corp., 67 NY2d 400 (1986); Matter of May v. Town of Lafayette Zoning Board of Appeals, 43 AD3d 1427 (4<sup>th</sup> Dept 2007). The essence of the dispute is the finding that Section 606 of the Zoning Ordinance of the Town of Minetto (“Code”) applies to the exclusion of Article 4 of the Code to prohibit the special permit sought by Cipriani. The petition claims that the Code does not state such an exclusion and that the ZBA failed to distinguish the use sought by Cipriani as a public utility or to even determine if Cipriani was a public utility.

The Court starts with the claim that Cipriani is a public utility. The case, Cellular Telephone Company v. Rosenberg, 82 NY2d 364 (1993), directly applies to this situation and compels the determination as a matter of law that Cipriani is a public utility. Matter of W. Beekmantown Neighborhood Association, Inc. v. Zoning Board of Appeals of the Town of Beekmantown, 53 AD3d 954 (3<sup>rd</sup> Dept 2008); Matter of Wind Power Ethics Group (WPRG) v. Zoning Board of Appeals of the Town of Cape Vincent, 60 AD3d 1282 (4<sup>th</sup> Dept 2009). As in Beekmantown and WPRG, public utility is not specifically defined by the Code.

Generally, the decision by the ZBA is regarded as presumptively correct absent illegality, a finding that it is arbitrary and capricious or erroneous as a matter of law or that it is unsupported by substantial evidence. Corter v. Zoning Board of Appeals for the Village of Fredonia, 46 AD2d 184 (4<sup>th</sup> Dept 1974); Matter of Carnelian Farms, LLC v. Leventhal, 151 AD3d 844 (2<sup>nd</sup> Dept 2017). In this matter what is presented is the interpretation of the Code and specifically that interpretation given to Section 606 by the ZBA. While the ZBA interpretation of the Code is entitled to deference, the Court bears the ultimate responsibility for interpreting the law. Matter of Devogelaere v. Webster Zoning Board of Appeals, 87 AD3d 1407 (4<sup>th</sup> Dept 2011) motion for leave to appeal denied 18 NY3d 808; Matter of Ogden Land Development, LLC v. Zoning Board of Appeals of the Village of Scarsdale, 121 AD3d 695 (2<sup>nd</sup> Dept 2014).

The Code must be construed according to the words used being given their ordinary meaning. Baker v. Town of Islip Zoning Board of Appeals, 20 AD3d 522 (2<sup>nd</sup> Dept 2005) motion for leave to appeal denied 6 NY3d 701; Matter of Falco realty, Inc. v. Town of Poughkeepsie Zoning Board of Appeals, 40 AD3d 635 (2<sup>nd</sup> Dept 2007) motion for leave to appeal denied 9 NY3d 807. It is well settled that a zoning code must be strictly construed against the municipality and in favor the property owner. Matter of Mamaroneck Beach & Yacht Club, Inc. v. Zoning Board of Appeals of the Village of Mamaroneck, 53 AD3d 494 (2<sup>nd</sup> Dept 2008); Matter of Falco realty, Inc. v. Town of Poughkeepsie Zoning Board of Appeals, 40 AD3d 635 (2<sup>nd</sup> Dept 2007) motion for leave to appeal denied 9 NY3d 807.

As a public utility, Cipriani is entitled to the application of Article 4 of the Code. The finding by the ZBA directly contravenes the express provisions of Article 4 of the Code that allow for the use sought by Cipriani and renders Article 4 of the Code meaningless for the public utility use. The use is authorized under the Code for a public utility in either the R-10 or R-20 districts pursuant to Code Sections 431 and 441 after issuance of a special permit. If it were the case that Section 606 was intended to modify either Section 431 or 441 specifically as to solar public utility energy projects, then it should have specified that to be the case. Instead, Section 606 is silent as to solar energy projects as a public utility. It was error to read such a restriction into Section 606.

Further, Section 606 as interpreted by the ZBA would nullify other provisions of Article 6 as follows:

Section 601 Purpose

The purpose of this section is to facilitate the development and operation of renewable energy systems based on sunlight. Solar energy systems are appropriate in all zoning districts when measures are taken, as provided in this section, to minimize adverse impacts on neighboring properties and protect the public health, safety and welfare.

Section 602 Applicability

2. Solar energy systems are permitted in all zones in the Town, subject to the requirements described below.

Section 605 Large Scale Solar Energy Systems

1. A Large Solar energy System is defined as a solar photovoltaic system with a rated capacity larger than 200kW, the principal purpose of which is to provide electrical power for sale to the general power grid or to be sold to other power customers, or to be consumed on site.
2. Pursuant to the Site Plan Review process, the project proponent shall provide the following documents to the Planning Board and/or Zoning Board:
  - a. Survey map done by a licensed surveyor;
  - b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
  - c. Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
  - d. Documentation of the major system components to be used, including the panels, mounting system, and inverter;
  - e. Name, address and contact information for system installer;



- f. Name, address and phone number of the project proponent, as well as all other property owners, if any;
  - g. Zoning district designation for the parcel of land comprising the project site;
  - h. Proof the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer owned generator. Off grid systems are exempt from this requirement.
3. Large scale principal use energy systems are subject to setback requirements of the particular zoning district in which they are located.

Section 609 Non-Conformance

- 2. Ground mounted systems
  - b. If a ground mounted system is to be installed on a property that is non-conforming because it violates zoning district requirements other than setbacks, then a special use permit must be obtained for the proposed installation.

While Section 601 states the purpose of Article 6 is to facilitate solar energy systems in all zoning districts. Section 606 permits the use in all zoning districts except residential districts. The conflict is again apparent with Section 602 allowing solar energy systems in all zones in the Town. Section 605 applies to large scale solar energy systems but makes no limitation to the public utility use allowed for both R-20 and R-10 residential zones. Section 609(2)(b) allows for a special use permit when there is a violation of zoning district requirements whereas here the ZBA determined that a special use permit could not be allowed based on Section 606.

The ZBA determination based on Section 606 is also internally inconsistent stating:

- 1. The zoning law of the Town of Minetto must be read and interpreted in its entirety. Section 431 allows certain uses with a special permit in an R-20 zone. Section 609 also refers to the use of special permits in certain cases. However, Section 606 specifically excludes the inclusion of ground mounted solar systems in R-20 zones.

Section 606 states as follows:

Section 606 Permitted Zoning Districts

- 1. All building mounted and ground mounted systems are permitted in all zoning districts, except residential zones, as a primary use or accessory use to any lawfully permitted principal use on the same property upon issuance of the proper permits herein and upon compliance with all requirements of this zoning ordinance.

Section 606 makes no specific reference to R-20 zones just as it makes no reference to the public utility use. Reference to the R-10 zone also does not appear in Section 606 and was not addressed

by the ZBA while it was part of the application. [DKT# 1 par. 14]. The ZBA interpretation of Section 606 is unreasonable and irrational. The failure of the ZBA to address the issue of public utility or the R-10 use as requested also affects the ZBA determination with a failure of substantial evidence to support the denial. Van Wormer v. Planning Board, 158 AD2d 995 (4<sup>th</sup> Dept 1990).

In short, the public utility use proposed by Cipriani for a large solar energy system is specifically allowed by Sections 431 and 441 of the Code and is subject to the requirements of Article 6 of the Code including but not limited to Section 603(1); 605 and 607(5). Cipriani is required to apply for a special use permit. The Town does not have the right under the Code to issue a blanket denial of a special use permit based on Section 606.

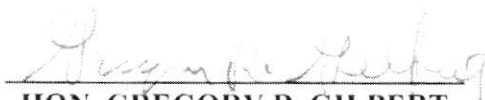
Accordingly, it is

**ORDERED, ADJUDGED AND DECREED** that the petition of **CIPRIANI ENERGY GROUP CORP.** is hereby **GRANTED** to the extent indicated herein; and it is

**ORDERED, ADJUDGED AND DECREED** that the determination of the Zoning Board of Appeals is **RESCINDED**, and the Respondents are hereby directed to proceed with a review of such building permit and special use permit requirements as have been and may be submitted by **CIPRIANI ENERGY GROUP CORP.** in accordance herewith.

**ENTER**

**Dated: April 12, 2022**  
**Oswego, New York**

  
**HON. GREGORY R. GILBERT**  
**SUPREME COURT JUSTICE**



At an IAS Term of the Greene County Supreme Court, held in and for the County of Greene, in the Village of Catskill, New York, on the 18th day of August, 2022.

PRESENT: HON. ADAM W. SILVERMAN,  
Acting Justice of the Supreme Court

STATE OF NEW YORK  
SUPREME COURT COUNTY OF GREENE

\_\_\_\_\_  
In the Matter of the Application of

FREEPOINT SOLAR LLC, and FPS POTIC  
SOLAR LLC,

Petitioners,

*For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules*

DECISION AND ORDER  
INDEX NO. EF2021-795

-against-

TOWN OF ATHENS ZONING BOARD OF  
APPEALS,

Respondent.

\_\_\_\_\_  
APPEARANCES:

THE MURRAY LAW FIRM PLLC  
Jacqueline Phillips Murray, Esq.  
10 Maxwell Dr Ste 100,  
Clifton Park, NY 12065  
**Attorney for Petitioners**

DREYER BOYAJIAN, LLP  
John Dowd, Esq.  
75 Columbia St.  
Albany, NY 12210  
**Attorney for the Respondent**

The following e-filed documents, listed by NYSCEF document number 1, 2, 15-35, 39-43, 46-53, 55, 56, 57 were read on the Petition and Answer.

ADAM W. SILVERMAN, A.J.S.C.

This special proceeding pursuant to CPLR article 78 was commenced on October 6, 2021, when Petitioners filed the Petition challenging Respondent's denial of a use variance. Petitioners, Freepoint Solar LLC, a nationwide developer of renewable energy infrastructure, and FPS Potic Solar LLC, a subsidiary of Freepoint Solar LLC, secured options to purchase two parcels of real property located at Potic Mountain Road in the Town of Athens, Greene County, intending to locate a solar energy facility on a portion thereof. Petitioners faced repeated delays from the Town government as they sought a building permit or standing to apply for a use variance. When their application to Respondent was finally heard, Respondent determined not to apply the public utility variance standard ("public necessity" test) to the application, but rather the general standard set under Town Law § 267-b (2) (b) (*see generally Matter of Otto v Steinhilber*, 282 NY 71 [1939]). Because Respondent erred by applying the wrong standard to the application, the determination is hereby vacated, and the matter remanded to Respondent for a new determination based upon application of the correct standard.

## I. BACKGROUND

On July 18, 2018, Petitioners contacted the Town regarding the building permit application and to request a pre-application meeting with Respondent [NYSCEF Doc No 1 ¶ 19]. Although an application with details of the Project had yet to be filed, the Town Attorney advised, by e-mail dated July 25, 2018, Petitioners' project "would not seem to fit the circumstances of wanting a large scale development in an RU zone" [NYSCEF Doc No 1 ¶ 20]. Petitioners thereafter attended the Town Board's September 17, 2018 meeting to informally present on the project and, based upon feedback from that meeting, Petitioners met with adjoining landowners regarding the



proposal leading to letters of support from nine of fourteen adjoining landowners and two additional adjoining landowners also offering their adjacent properties to be used for the project. [NYSCEF Doc No 1 ¶ 21-24].

On December 6, 2019, Petitioners contacted the Town Attorney to confirm the Town's application procedures and were informed they must file an application for a building permit from the Town Code Enforcement Officer ("CEO") and be denied before they would have standing to appeal the denial and could file a Use Variance Application with Respondent [NYSCEF Doc No 1 ¶ 25-27]. On January 7, 2020, Petitioners sent their Building Permit Application, together with two copies of the preliminary site plan [NYSCEF Doc No 1 ¶ 28].

The CEO requested the "cost of construction" to calculate the fee, and, on January 10, 2020, the Town Attorney replied that Petitioners would "need to use a proposed value for the Project" so that the building permit fee could be calculated [NYSCEF Doc No 1 ¶ 29-30]. On January 15, 2020, Petitioners sought clarification regarding the need for cost of construction as the Town's fee schedule did not set forth a building permit application fee based on the "costs of construction" or the "value for the Project," but was rather, based on a "per square foot" calculation [NYSCEF Doc No 1 ¶ 31]. On January 16, 2020, the Town Attorney directed Petitioners to contact the CEO directly, however the CEO failed to respond until February 7, 2020, when he advised that the building permit application was "incomplete without an estimate of the cost of construction so we can calculate the permit fee," and requested copies of Petitioners' option agreements [NYSCEF Doc No 1 ¶ 31-33]. On February 12, 2020, the CEO advised Petitioners that the denial would be issued upon receipt of the option agreements [NYSCEF Doc No 1 ¶ 34]. On February 26, 2020,

Petitioners provided the “cost of construction” and option agreements while offering to pay the fee once it was calculated by the CEO [NYSCEF Doc No 1 ¶ 35].

Expecting the denial to be forthcoming, on February 28, 2020, Petitioners’ expressed their intention to attend Respondent’s March 11, 2020 meeting, however the Town Attorney stated a denial would not be provided until the application was “completed and the building permit fee is paid,” despite the Town having not provided a fee amount or noted any additional alleged omissions and advised that Petitioners would not be afforded an opportunity to be heard at the meeting [NYSCEF Doc No 1 ¶ 35-38]

On March 2, 2020, the CEO discussed Petitioners’ application with the Town Board, and on March 3, 2020, the Town Attorney advised Petitioners that the application would not be decided until the fee was paid, despite no fee amount being set, and that the Town Board directed the Town Attorney to have no further discussions or correspondence with Petitioners regarding the matter [NYSCEF Doc No 1 ¶ 39]. Thereafter, on March 6, 2022, since no calculation was provided, Petitioners did their own calculation and submitted it with a check to the Town [NYSCEF Doc No 1 ¶ 40-42]. In response, on March 19, 2020, the CEO requested data related to the project’s lot coverage and connection to the power grid despite Petitioners having already provided lot coverage information with its application [NYSCEF Doc No 1 ¶ 43-45].

On April 15, 2020, the CEO requested, despite none of these items being on the building permit application, the quantity and square feet of the proposed solar panels, the total square feet of land for the project, and whether a Stormwater Pollution Prevention Plan (“SWPPP”) and State Pollutant Discharge Elimination System (“SPDES”) General Permit would be filed with the New York State Department of Environmental Conservation (“NYSDEC”) and any other



environmental requirements [NYSCEF Doc No 1 ¶ 46-49]. On April 16, 2020, Petitioners replied that the solar panel square footage was already provided to the CEO on March 13 and 19, 2020, and added the solar panel quantity and dimensions, and confirmed that a SWPPP, SPDES General Permit and a Full Environmental Assessment Form would be required for the project and would be submitted with Petitioners' applications upon the CEO denying the building permit application [NYSCEF Doc No 1 ¶ 49]. On April 17, 2020, the CEO requested the NYSDEC SWPPP and SPDES General Permit [NYSCEF Doc No 1 ¶ 50]. On May 8, 2020 the CEO requested Petitioners secure all New York State approvals for the project [NYSCEF Doc No 1 ¶ 54].

On May 4, 2020, Petitioners attempted to speak at the Town Board meeting but were muted and told they must request to be on the agenda through the Town Clerk [NYSCEF Doc No 1 ¶ 52]. On May 12, 2020, after rejecting Petitioners' request to be added to the agenda, the Town Supervisor stated that there was "no reason to schedule a meeting with the Town Board/Town Attorney/Planning or Zoning Boards" because Petitioners' application remained "incomplete" until the Town received: (1) "full set of engineered plans"; (2) "estimated project cost"; and (3) "correct application fee" [NYSCEF Doc No 1 ¶ 52-58].

On May 15, 2020, the CEO made an additional request for Workers' Compensation and liability insurance certificates [NYSCEF Doc No 1 ¶ 60].

On June 15 and July 1, 2020, Petitioners provided the Town with a full set of plans, all New York State approvals for the project, and Workers' Compensation and liability insurance certificates, however, despite outreach by Petitioners over the next two months, the CEO failed to provide a fee amount [NYSCEF Doc No 1 ¶ 61-62].

On September 9, 2020, the Town Attorney requested that Petitioners re-submit all previously provided information and Petitioners did so the same day [NYSCEF Doc No 1 ¶ 63]. On October 20, 2020, the Town Board adopted a fee of \$1,000 per megawatt and on December 11, 2020, Petitioners delivered the fee [NYSCEF Doc No 1 ¶ 64-65]. On January 20, 2021, over a year after the initial application, the CEO finally denied the application because the project was in a zoning district not permitted by Town's Solar Law, as was evident since the time the application was submitted [NYSCEF Doc No 1 ¶ 66-67]

On February 9, 2021, Petitioners filed their Use Variance Application with Respondent [NYSCEF Doc No 1 ¶ 68-70]. Petitioners then attended Respondent's March 17, 2021 meeting, observing their applications unopened, and were informed by Respondent's Chairman that "there was nothing he could do" because the project was in a zoning district where it was not a permitted use [NYSCEF Doc No 1 ¶ 71-78]. Petitioners next presented at Respondents' May 12, 2021 meeting, urging consideration of the Use Variance under the public utility standard [NYSCEF Doc No 1 ¶ 80-89]. After Respondent requested the option agreements, despite their previous submittal, and failed to attend a joint visual field study at the site organized by Petitioners with the Planning Board and Respondent, Petitioners next presented the Project at the ZBA's August 11, 2021 meeting [NYSCEF Doc No 1 ¶ 96, 106, 108, 111-119]. On September 8, 2021, Respondent issued a written decision unanimously denying Petitioners' Use Variance Application [NYSCEF Doc No 1 ¶ 124-129]. Significantly, the determination was based upon the standard set forth in Town Law § 267-b (2) (b) and provided no consideration under the public utility test set forth in *Matter of Consolidated Edison Co. v Hoffman* [NYSCEF Doc No 29].



## II. Standard Applicable to a Public Utility Use Variance Application

Generally, an applicant for a use variance must show that the zoning regulations and restrictions have caused “unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created” (Town Law § 267-b [2] [b]; *see generally Matter of Otto v Steinhilber*, 282 NY 71 [1939]).

“It has been observed . . . that [the unnecessary hardship] requirements are not appropriate where a public utility . . . seeks a variance, since the land may be usable for a purpose consistent with the zoning law, the uniqueness may be the result merely of the peculiar needs of the utility, and some impact on the neighborhood is likely” (*Matter of Consolidated Edison Co. of N.Y. v Hoffman*, 43 NY2d 598, 607 [1978]; *see* 2 Salkin, *New York Zoning Law and Practice* § 11:22 [4th ed. 2011]). “It has long been held that a zoning board may not exclude a utility from a community where the utility has shown a need for its facilities” (*Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d 364, 372 [1993] [internal quotation marks, brackets, and citations omitted]; *see* 12 NY Jur 2d, *Buildings, Zoning, and Land Controls* § 290; 2 Salkin, *New York Zoning Law and Practice* § 11:19 [4th ed. 2011]). Likewise, local boards may not deny an application based “solely on community objection” (*Matter of Biggs v Eden Renewables LLC*, 188 AD3d 1544, 1548

[3d Dept 2020] [Generalized community objections to the large scale solar project “due to potential concerns of negative visual impact and negative impact upon adjoining property values” held insufficient to overcome evidence in the record justifying granting of application]; *see also Cellular Tel. Co. v Village of Tarrytown*, 209 AD2d 57, 66 [2d Dept 1995] [In considering a public utility’s application for a variance, “a municipality may not invoke its police powers solely as a pretext to assuage strident community opposition”], *lv denied* 86 NY2d 701 [1995]). “In short, due to the essential nature of the service and the limited flexibility there is as to where the facility can be located in order to generate or provide the service, the facility must be, and is, entitled to a relaxed zoning standard” (Patricia E. Salkin and Robert Burgdorf, *Siting Wind Farms in New York: Applicability of the Relaxed Public Utility Standard*, New York Zoning Law and Practice Report vol. 7, No. 1.; *see* 3 Rathkopf’s *The Law of Zoning and Planning* § 48:6; 78:2 [4th ed.]).

“Although a municipality is not free to prevent a utility from providing necessary services by application of its zoning powers, neither may a utility simply disregard the local ordinances. Rather, a balance must be maintained between those interests of the locality which can be expressed by zoning ordinances and the needs of the community which must be served by the utility” (*Matter of Zagoreos v Conklin*, 109 AD2d 281, 289 [2d Dept 1985]; *see Matter of United States Transmission Sys. v Schoepflin*, 63 AD2d 970, 971 [2d Dept 1978]; *see also* 2 Salkin, *New York Zoning Law and Practice* § 11:27 [4th ed. 2011] [Expanding upon efforts to regulate solar energy facility siting to balance the need for energy with the potential negative externality such as loss of habit and open space]; *see generally* Sarah Pizzo, Note, *When Saving the Environment Hurts the Environment: Balancing Solar Energy Development with Land and Wildlife Conservation in A Warming Climate*, 22 *Colo J Intl Envntl L & Poly* 123 [2011]). “Instead [of the



unnecessary hardship test], the utility must show that modification is a public necessity in that it is required to render safe and adequate service, and that there are compelling reasons, economic or otherwise, which make it more feasible [to seek the variance] than to use alternative [sites]” (*Matter of Consolidated Edison Co. of N.Y. v Hoffman*, 43 NY2d at 611; see *Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 372 [Holding “*Matter of Consolidated Edison (supra)*, applies to all public utilities. It also applies to entirely new sitings of facilities, as well as the modification of existing facilities”). The Court of Appeals has further held that ““where the intrusion or burden on the community is minimal, the showing required by the utility should be correspondingly reduced”” (*Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 372, quoting *Matter of Consolidated Edison Co. of N.Y. v Hoffman*, 43 NY2d at 611; see *Sprint Spectrum, L.P. v Zoning Bd. of Appeals of the Town of Guilderland*, 173 Misc 2d 874, 877 [Sup Ct, Albany County 1997, Graffeo, J.] [Holding “to obtain a use variance, the petitioner must demonstrate that the site is necessary to provide safe and adequate service and that there are compelling reasons, economic or otherwise, to obtain the variance. Moreover, where the burden on the community is minimal, the showing required by the utility should be correspondingly reduced”]).

In determining what applicants are subject to the public utility standard, courts do not apply a rigid rule (see *Matter of Nextel Partners v Town of Fort Ann*, 1 AD3d 89, 93 [3d Dept 2003] [Holding a “case-by-case” analysis of changes in industries and regulations may impact the viability of the rationale underlying the public utility exception, but deregulation and competition alone do not prevent an applicant from being a public utility], *lv denied* 1 NY3d 507 [2004]) “A ‘public utility’ has been defined to mean ‘a private business, often a monopoly, which provides services so essential to the public interest as to enjoy certain privileges such as eminent domain

and be subject to such governmental regulation as fixing of rates, and standards of service” (*Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 371, quoting 2 Anderson, *American Law of Zoning* § 12.32, at 568-569 [3d ed]). “Characteristics of the public utility include (1) the essential nature of the services offered which must be taken into account when regulations seek to limit expansion of facilities which provide the services, (2) ‘operat[ion] under a franchise, subject to some measure of public regulation,’ and (3) logistic problems, such as the fact that ‘[t]he product of the utility must be piped, wired, or otherwise served to each user . . . [,] the supply must be maintained at a constant level to meet minute-by-minute need[, and] [t]he user has no alternative source [and] the supplier commonly has no alternative means of delivery” (*id.*). “There is usually no question that the activities of heavily regulated electric and gas companies and their energy generation and transmission projects and facilities involve the activities of public utilities” (4 Rathkopf’s *The Law of Zoning and Planning* § 78:9 [4th ed.], citing *Matter of West Beekmantown Neighborhood Assn., Inc. v Zoning Bd. of Appeals of Town of Beekmantown*, 53 AD3d 954, 956 [3d Dept 2008] [Holding zoning board rationally found that wind turbines were “public utility”]; see *Matter of Wind Power Ethics Group (WPEG) v Zoning Bd. of Appeals of Town of Cape Vincent*, 60 AD3d 1282, 1283 [4th Dept 2009] [Holding zoning board’s classification of wind-powered generators as a utility was neither irrational nor unreasonable, and that the determination is supported by substantial evidence]).

### III. Discussion

Respondent asserts that Petitioners’ solar facility is not a public utility for zoning purposes. Respondent also argues that the Town of Athens zoning ordinance does not address public utilities



and its definition of “essential services”<sup>1</sup> is narrower than that interpreted to support wind turbines as public utilities (*compare Matter of Wind Power Ethics Group (WPEG) v Zoning Bd. of Appeals of Town of Cape Vincent*, 60 AD3d at 1283). Additionally, Respondent contends that Petitioners cannot be considered a utility because they do not meet the test under *Matter of Cellular Tel. Co. v Rosenberg* since they do “not hold a monopoly on the provision of a particular service”; do “not have the power of eminent domain; there is nothing unique about the essential nature of its services that requires mandatory placement in one specific area; while operators of such facilities are lightly regulated by the [Public Service Commission], the applicant does not operate under a franchise; and finally, solar generating facilities are not subject to the same logistical problems as true public utilities with respect to location and alternative sources and means of delivery.” Finally, Respondent maintains that even assuming the applicability of the public utility standard, it must be held as a “gap” test, that is it would only be applicable if an applicant could show a gap in service that needs to be filled (*citing* 2 Salkin, *New York Zoning Law and Practice* § 12:03 [4th ed. 2011]).

Contrary to Respondent’s assertion that “electricity is an essential service - is well settled” (Patricia E. Salkin and Robert Burgdorf, *Siting Wind Farms in New York: Applicability of the Relaxed Public Utility Standard*, *New York Zoning Law and Practice Report* vol. 7, No. 1.; *see generally Berg v Chelsea Hotel Owner, LLC*, 203 AD3d 484 [1st Dept 2022] [Listing, in a different context, “essential services” as “heat, hot water, gas, and electricity”]). “While ‘public utility’ is not defined by the zoning law at issue, it is undisputed that the [facility that Petitioners] intend[]

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<sup>1</sup> Code of the Town of Athens 180-3 provides “Essential Services: The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, traffic signals, hydrants, street signs and similar equipment and accessories in connection therewith, but not including buildings, unless specifically permitted by special permit, and reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare”.

to construct will generate energy, a useful public service, and will be subjected to regulation and supervision by the Public Service Commission” (*Matter of West Beekmantown Neighborhood Assn., Inc. v Zoning Bd. of Appeals of Town of Beekmantown*, 53 AD3d at 956; see Public Service Law § 2 [2-b] [Stating that the “term ‘alternate energy production facility,’ . . . includes any solar (facility) . . . together with any related facilities located at the same project site, with an electric generating capacity of up to eighty megawatts, which produces electricity, gas or useful thermal energy”]; see also Public Service Law § 2 [12], [23]; 5 [1] [b]; 66-c [1]). That the solar energy industry is not subject to an exclusive franchise does not prevent the application of the relaxed standard (see *Matter of Nextel Partners v Town of Fort Ann*, 1 AD3d at 93). Nor is the power of eminent domain the sole defining feature of a public utility (see *Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 371). While Respondent argues that Petitioners’ facility does not face the same logistical challenges as “true public utilities,” the record includes a Central Hudson Capacity Map showing distribution system locations throughout the area supporting Petitioners’ assertion that the location is subject to the logistic problems contemplated by *Matter of Cellular Tel. Co. v Rosenberg* (82 NY2d at 371) [NYSCEF Doc No 33].<sup>2</sup>

Finally, Respondent’s assertion that Petitioners must meet a “gap” test in a manner similar to a cellular provider (see *Matter of Independent Wireless One Corp. v City of Syracuse*, 12 AD3d 1085, 1086 {4th Dept 2004}) is unavailing. In *Matter of Consolidated Edison Co. v Hoffman*,

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<sup>2</sup> Beyond Respondent’s conclusory assertion that solar can be located anywhere and Petitioners’ evidence in the record regarding infrastructure limitations, property law generally has begun recognizing the variable rights, and impacts, associated with solar energy and real property (see e.g. Brent Resh, Note, *Something New Under the Sun: The Drecp and Utility-Scale Solar on the New Energy Frontier*, 18 Nev LJ 317, 333-335 [2017] [Discussing the limitations of economics and infrastructure in siting large scale solar creating theoretical “renewable parcels” or “solarsheds”]; Hannah Wiseman, *Expanding Regional Renewable Governance*, 35 Harv Envtl L Rev 477, 511-512 [2011] [Recognizing that a “large wind or solar farm is useless if not connected to a transmission line that carries the electricity generated to consumers]).



respondent in that case denied an application by Consolidated Edison Company for a variance for the construction of a wet cooling tower for its nuclear generating plant (43 NY2d at 611). The Court of Appeals did not look solely to a coverage gap relating only to the municipality making the determination, but instead considered the broader “potential hardship to Con Edison’s approximately three million customers, and millions of others affected” (*id.* at 609). In considering the necessity of the variance, the Court of Appeals noted that “operation of the plant saved Con Edison customers \$78,000,000 in fuel expense . . . [and if the variance were denied and the facility] closed down[,] additional fuel costs to make up the lack of generation by increasing production at its other plants, all of which burn imported oil, would translate to \$567,000 per day . . . approximately 7,300,000 barrels of oil or equivalently 306,600,000 gallons” in a year (*id.* at 608). Similarly, the test for an electrical public utility, such as in this case, is not that there is “no other public utility provider available that could provide access to the proposed utility service . . . [and that] the locality not already served by another service provider” as urged by Respondent [NYSCEF Doc 46, p 9], but public necessity must be viewed in a broader consideration of the general public’s need for the service.

#### IV. Conclusion

Because Respondent erred by applying the general standard set under Town Law § 267-b rather than the test for a use variance set forth in *Matter of Consolidated Edison Co. v Hoffman*, the determination is hereby vacated, and the matter is remitted for Respondent to reconsider Petitioners' application with the appropriate test in mind (*see generally Matter of Nye v Zoning Bd. of Appeals of Town of Grand Is.*, 81 AD3d 1455, 1456 [4th Dept 2011]; *Millpond Mgt., Inc. v Town of Ulster Zoning Bd. of Appeals*, 42 AD3d 804, 806 [3d Dept 2007]).

Finally, in light of the foregoing, while the record reflects that an executive session was held that may have constituted a technical violation of the Open Meetings Law (Public Officers Law art 7), the Court finds this insufficient to warrant the award of attorney fees (*see Matter of Nextel Partners v Town of Fort Ann*, 1 AD3d at 96).

Accordingly, it is

**ORDERED**, that the petition is hereby **partially granted** to the extent that Respondent's determination is annulled and the matter is remitted to Respondent for further proceedings not inconsistent with this Court's decision; and it is further

**ORDERED**, the petition is **partially denied and dismissed**.

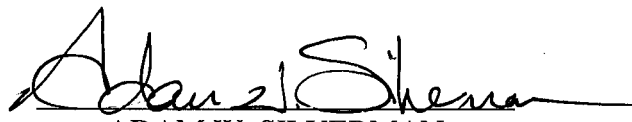
The Court has uploaded the original Decision/Order to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the County Clerk.

Counsel for Petitioners is not relieved from the applicable provisions of CPLR 2220 and 202.5b (h) (2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action/proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

**SO ORDERED AND ADJUDGED**

**ENTER.**

Dated: August 18, 2022  
Catskill, New York

  
ADAM W. SILVERMAN  
Acting Justice of the Supreme Court



TOWN OF BINGHAMTON  
ZONING BOARD OF APPEALS

JUN 15 2022

TOWN OF BINGHAMTON  
VICKIE A. CONKLIN  
TOWN CLERK

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In the Matter  
Of the  
Application by  
ATLAS RENEWABLES LLC  
for a public utility use variance  
affecting property known as  
57 Powers Road, Binghamton, New York  
Tax Map No.: 161.14-1-35.11

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**DECISION**

Atlas Renewables LLC/Binghamton Solar, LLC, with consent and authorization of the property owner, having filed an application for a public utility use variance with the Zoning Board of Appeals, with respect to the construction of a 5.00 Megawatt Community Solar Farm on the property located at 57 Powers Road, Binghamton, New York owned by Robert Haskell, and the Zoning Board of Appeals having caused due notice of a public hearing on the said application to be duly published, posted and served, and having conducted a public hearing on the application of Atlas Renewables LLC on November 8, 2021 which public hearing was kept open through the December 13, 2021 meeting; and regular zoning board meetings were held to discuss the application of Atlas Renewables LLC on; January 10, 2022; February 14, 2022, April 18, 2022 and May 9, 2022, and having heard all of the evidence presented relating to the public utility use variance required by law to be considered in granting or denying such a public utility use variance, the Zoning Board of Appeals hereby makes the following findings and decision. Present for said meetings were Members Gerardo Tagliaferri, Mark Bordeau, Theresa Taro, Tom Bensley, and alternate member Timothy Cooper. Zoning Board Member, Sara Reifler, recused herself at the meeting on November 8, 2021 and did not participate in any of the meetings or public hearing.

### FINDINGS OF FACT

1. That Robert D. Haskell is the owner-landlord of 57 Powers Road, Binghamton, New York, hereinafter referred to as the “Premises” and is hereby bound by this Decision.
2. That Atlas Renewables LLC is the general contractor and Applicant for the Premises.
3. That the Premises is located in a district zoned R-1 according to the Town of Binghamton Zoning Map.
4. That the Applicant seeks to construct a 5.00 Megawatt Community Solar Farm upon obtaining a public utility use variance given to certain public utility related projects across NYS, which if granted, would then require site plan approval through the Planning Board.

### DECISION

The Applicant filed a timely application for a public utility use variance and has standing as the Lessee of the Premises, together with the Owner-Landlord of the Premises. The provisions of the State Environment Quality Review Act apply to this project. Timely notice of the November 8, 2021 public hearing was duly published, posted and served. A public hearing was convened on November 8, 2021 at which time the Applicant and any other interested parties were given an opportunity to present evidence relevant to the application. The public hearing was continued on December 13, 2021 which notice was duly published, posted and served. The continuation of the public hearing was convened on December 13, 2021 at which time the applicant and any other interested parties were given an opportunity to present evidence relevant to the application. The public hearing was closed on December 13, 2021. The Zoning Board of Appeals meeting was continued on January 10, 2022 at a regularly scheduled Board meeting at which time the Applicant and the Board members discussed a list of potential issues related to



the application and SEQR part 1. The applicant was given further opportunity to present evidence relevant to the Application. The meeting was continued on February 14, 2022 at a regularly scheduled Board meeting which was convened on February 14, 2022 at which time the Applicant and the Board members discussed a list of potential issues related to the application and SEQR part 2. The Board meeting was continued on April 18, 2022 which notice was duly published, although not required, and, posted. The continuation of the Zoning Board of Appeals meeting was held on April 18, 2022 at which time the Applicant and the Board members continued the discussion related to SEQR part 2. The Board meeting was continued on May 9, 2022 which notice was duly published, posted and served. On May 9, 2022 the Applicant and the Board members continued discussion related to SEQR part 3, and any other interested parties were given an opportunity to present evidence relevant to the Application. The Applicant had previously presented evidence of the statutory factors required for the granting of a public utility use variance, and reviewed those factors again with the Board.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the public hearing in person and David Brennan (Atlas-Applicant Attorney) attended the public hearing via zoom on November 8, 2021. Residents Tami Zebrowski-Darrow, Michael Bensley, Bill Miller & Bill Miller Jr., Gary & Barbara Sanford, Carolyn Cavallaro, Ruth McCormick, Charrie Stymacks, Gary Taubar, Joan & Stephen Zahorian, Teresa Quain, Anthony Restin attended the public hearing in person and Lisa Young attended via zoom on November 8, 2022. The members of the public listened to the presentation by the Applicant and raised questions, comments and concerns. Generally speaking, the public did not voice opposition to the proposed project and some voiced support for green energy.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the meeting in person and David Brennan (Atlas-Applicant Attorney) attended via zoom on the December 13, 2021 continued hearing. Residents Gary Taubar, Tami Zebrowski-Darrow, Carolyn Cavallaro, Gary Sanford, Barbara Sanford, Ruth McCormick attended the continued public hearing in person on December 13, 2021.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the meeting in person and David Brennan (Atlas-Applicant Attorney) attended via zoom on January 10, 2022. Other than some elected officials, no members of the public directly participated.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the ZBA meeting in person and David Brennan (Atlas-Applicant Attorney) attended via zoom on February 14, 2022. Other than some elected officials, no members of the public directly participated.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), David Brennan (Atlas-Applicant Attorney), and Robert Haskell (Owner-Applicant) attended the ZBA meeting in person and on April 18, 2022. Other than some elected officials, no members of the public directly participated.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), David Brennan (Atlas-Applicant Attorney), attended the Board meeting in person on May 9, 2022. At no time did any members of the public present any opposition to the proposed project and no one presented any documentary evidence in opposition to the request for the said public utility use variance.

The Zoning Board of Appeals again reviewed part 1 and part 2 of SEQR for this proposed project. The Zoning Board of Appeals then voted 5-0 that there was no significant



environmental impact with respect to said proposed project that could not be mitigated by actions on the part of the Applicant and Landowner. Accordingly, the Zoning Board determined there was a negative declaration with respect to SEQR provided certain mitigation efforts were implemented by the Applicant and Landowner.

Based on the list of issues developed by the Zoning Board of Appeals, it appears that all issues, concerns and questions initially raised by the public were satisfactorily answered. Over the course of the Board meetings after the public hearing was closed, the Board deliberated, and discussed the various factors and underlying facts, including applying said proof to the applicable legal factors that must be considered in determining an application for a public utility use variance. The Board determined that granting the public utility use variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.

The Zoning Board of Appeals considered the specific factors or criteria for a public utility use variance approval, including the following:

- 1) Will the project provide an essential service, namely a) energy required to render safe and adequate electrical service to the local electric grid and b) compelling reasons, economic or otherwise, for a need for such a variance,
- 2) Will the generation of electricity through the proposed solar energy facility be regulated by the Public Service Commission, or by or through any other public regulations,
- 3) Will the electricity to be generated go into the regulated electric grid system in New York State.
- 4) Is there a lack of any other alternative viable locations in the Town for such a project.

The Zoning Board of Appeals having duly considered the evidence and proof presented with respect to said factors in their deliberations prior to voting, and also in consideration of the fact that there was no public opposition made to the requested variance. As a result, the Board then took up a motion by member Mark Bordeau, seconded by member Timothy Cooper. The Board then voted to approve the public utility use variance by a vote of four ayes and one nay as follows: Chairman, Gerardo Tagliaferri, aye; Theresa Taro, aye; Mark Bordeau, aye; Tom Bensley, nay; and Timothy Cooper, aye.

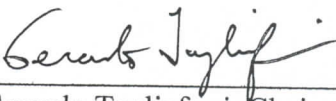
Based on all of the evidence and proof presented, and for the reasons stated above, the application for said public utility use variance was granted with the following conditions:

- 1) The Applicant and any successor or assign shall maintain the buffer as shown on the revised plan drawing submitted to the Board.
- 2) If the buffer is disturbed in any manner during construction/development, the Applicant shall be responsible for all replacement plantings to establish and maintain the buffer.
- 3) Additional plantings and screening shall be placed in the areas where the Orchard Park area is visible from the project development boundary.
- 4) All plantings or new screening to make up the buffer or to supplement the buffer shall be deer resistant.
- 5) To extent permitted by law, the Town of Binghamton residents shall have priority for solar energy from this solar development.
- 6) Any decommissioning by the Applicant, or any successors and assigns, shall be performed in accordance with the Town's Solar Local Law and any applicable New York State law.



7) All conditions herein shall also be the responsibility of any successor or assign of the Applicant Atlas Renewables LLC/Binghamton Solar LLC.

Dated: June 14, 2022

  
\_\_\_\_\_  
Gerardo Tagliaferri, Chairman

At a Regular Monthly Meeting of the Zoning Board of Appeals held in and for the Town of Oswego on the 19<sup>th</sup> day of January, 2023, at 7:00 p.m. at the Town Hall located at 2320 County Route 7, Oswego, NY.

**STATE OF NEW YORK    COUNTY OF OSWEGO**  
**TOWN OF OSWEGO    ZONING BOARD OF APPEALS**

In the Matter of an Application by

Oswego PV, LLC

For A Use Variance to Operate a 3-MWAC solar farm  
at 447 County Route 20, Residential 3 (R3) District  
pursuant to the Zoning Law of the Town of Oswego, New York

**RESOLUTION**

**WHEREAS**, Oswego PV, LLC, a subsidiary of RIC Development, LLC (the “Applicant”) has applied for a use variance to operate a 3.0MWac solar farm (the “Project”) on property owned by Constance Simmons located at 447 County Route 7 (Tax Parcel No. 164.00-06-02.08) in the Town of Oswego’s Residential 3 (R3) Zoning District; and

**WHEREAS**, a use variance application was submitted by letter dated September 8, 2022, together with a comprehensive packet of materials that included, among other items, a site plan, evidence of site control, a visual impact assessment, Full Environmental Assessment Form (FEAF), Wetland study, Stormwater Pollution Prevention Plan (SWPPP), various state and federal agency determinations, a Coordinated Electric System Interconnect Review (CESAIR) from National Grid, and a Decommissioning Plan, (collectively the “Special Use Permit Application”); and

**WHEREAS**, all documentation contained in the Special Use Permit Application has been reviewed by the Zoning Board of Appeals (“ZBA”), in addition to the Use Variance application for consideration of a use variance as the result of the absence of a solar energy facility being specifically permitted within the Town of Oswego<sup>1</sup>; and

**WHEREAS**, the provisions of GML §239 l & m are triggered by the Project and therefore the use variance application together with the Special Use Permit Application packet were provided by the Town of Oswego Planning Board to the County of Oswego Planning Department for its recommendation; and

<sup>1</sup> The Town of Oswego Zoning Law does not reference any renewable energy facilities, having been adopted and revised prior to the influx of such facilities that are now commonplace in New York State; accordingly, a use variance is required before a special permit/site plan approval is considered.



**WHEREAS**, the County of Oswego reviewed the Project and in a letter dated October 10, 2022, recommended denial without prejudice, reasoning that the packet of materials submitted contained no evidence that the “applicable zoning regulations and restrictions have caused unnecessary hardship”<sup>2</sup> and declared that “the ZBA can submit evidence documenting the [sic] that the zoning regulations have created unnecessary hardship; and we will reconsider the application by the ZBA for a use variance, and planning board for site plan review and special permit[;]” and

**WHEREAS**, a joint public meeting of the Town’s ZBA and Planning Board was held on October 17, 2022, at which point several members of the public attended and provide various comments opposed to the proposed use variance and the Project in general; and

**WHEREAS**, the Applicant submitted additional supplemental materials to address many of the concerns of the residents and property owners near the proposed solar farm location, and further addressed the applicable use variance criteria the Courts of this State have applied to renewable energy projects (mostly wind and solar facilities), declaring such projects to be public utilities and thus reviewable under the less-restrictive *Hoffman*<sup>3</sup> standard of review, which was recently applied by the New York State Supreme Court in a legal proceeding involving the neighboring Town of Minetto<sup>4</sup>; and

**WHEREAS**, during a separate meeting, the Planning Board declared itself lead agency pursuant to SEQRA and began reviewing the FEAF submitted by the applicant, and the ZBA having also considered the environmental impacts of granting a use variance communicated its position on potential impacts on the environment and thereafter were notified that the Planning Board carefully considered such impacts and determined no significant impacts to the environment will occur as a result of the Project and the issued a Negative Declaration on January 16, 2023; and

**WHEREAS**, based on the *Hoffmann* use variance standard, as well as the completeness of the application, the ZBA hereby declares that it has sufficient information before it to make a determination on the application for use variance for the Project;

**NOW, THEREFORE**, upon motion made by board member Palm and seconded by board member Lorenz it is and shall hereby be

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<sup>2</sup> For reasons set out in this resolution and supplemental materials submitted by Applicant, the standard of review for a use variance for a public utility was incorrectly applied by the County of Oswego initially, but later correctly applied resulting in its letter recommendation dated November 18, 2022 to approve the Project.

<sup>3</sup> Consolidated Edison Co. of New York v. Hoffmann, 43 N.Y.2d 598 (1978), the NYS Court of Appeals holding that public utilities are subject to a more lenient standard when seeking a use variance. Public utilities can demonstrate entitlement to a variance by showing that the proposed “modification is a public necessity...required to render safe and adequate service...[and]...where the intrusion or burden on the community is minimal.” *Id.* at 610.

<sup>4</sup> See, Cipriani Energy Group Corp. v. Zoning Board of Appeals of the Town of Minetto, et al. (Index No. EFC-2022-0043), J. Gilbert, April 13, 2022.

**RESOLVED**, that the use variance application submitted by Oswego PV, LLC is approved as submitted for the following reasons:

- 1. The Project is a public utility and thus is afforded the standard of review for a use variance articulated in *Hoffmann*;
  - a. By its very nature, clean energy is a public necessity as proclaimed by the State of New York in its Clean Energy Standard and further codified in the Climate Leadership and Community Protection Act; and
  - b. based on the environmental review the impacts on the community are minimal; and it further

**RESOLVED**, that the use variance application submitted by Oswego PV, LLC is approved as submitted upon the following conditions:

- 1. Follow the conditions contained in any resolution by the Town of Oswego Planning Board approving the site plan and special permit<sup>5</sup>;
- 2. Follow all applicable federal, state, and local laws governing the construction and use of the property as a solar farm; and
- 3. Present the Town of Oswego with proof that a decommission bond or fund is established for the benefit of the Town and the property owner for the removal of the solar arrays and the return of the property to its pre-solar farm condition, and such bond or fund is periodically renewed to ensure the decommissioning costs are appropriate.

The motion having been placed before the Zoning Board of Appeals for a vote was adopted/defeated by a vote of 3 in favor, 2 opposed, and 0 abstained/recused in accordance with the following roll call vote:

DEBRA SHOENFELT-JASKULA, CHAIR	YES
ROBERT BAKER	YES
KENNETH KRAPP	NO
TRICIA LORENZ	NO
COLIN PALM	YES

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<sup>5</sup> The ZBA strongly recommends that every consideration be given to utilizing access to the solar farm from County Route 7 through the Town of Oswego Highway Garage property to minimize or eliminate vehicle safety concerns should access to the property be gained solely from County Route 20. The Town Board is encouraged to grant the applicant the necessary easement to permit access through the town's property.



# CERTIFICATION

**I HEREBY CERTIFY** the above to be a full, true and correct copy of a Resolution duly adopted by the Zoning Board of Appeals of the Town of Oswego, on the date mentioned, in accordance with the vote recorded above.

Dated: January 23, 2023

  
KATHY DELANEY  
SECRETARY  
ZONING BOARD OF APPEALS

**EXHIBIT B**



Parcel Address	Landowner	Tax ID	Zoning District	Parcel Size (Acres)	Distance from Circuit	Reason why Project is not Feasible
870 Snyder Road	Cayuga Operating Co.	11.-1-3.212	IR	400.52	8 miles	Too far from circuit.
39 Village Circle	Cayuga Operating Co.	11.-1-3.211	IR	54	8 miles	Too far from circuit.
Ridge Road	Portland Point LLC	36.-1-8.1	IR	23.36	3.7 miles	Too far from circuit.
	Cayuga Crushed Stone Inc	36.-1-9.2	IR	232.13	.8 miles	Active gravel mine onsite.
	Cayuga Crushed Stone Inc	35.-1-1.2	IR	59.89	.8 miles	Active gravel mine onsite.
87 Portland Point Road	Cargill Inc	36.-1-1	IR	127.02	3.5 miles	Too far from circuit; existing warehouse onsite.
	Cargill Inc	35.-3-1.2	IR	102.38	1.16 miles	Active gravel mine onsite.
191 Portland Point Road	Cayuga Crushed Stone Inc	35.-1-4.2	IR	14.3	1.62 miles	Parcel too small to accomodate Project.
Drake Road	Cargill Inc	35.-3-16	IR	10.6	1.62 miles	Parcel too small to accomodate Project.
	Lansing Town Wat Dist #1	30.-1-16.12	IR	17.14	.65 miles	Parcel too small; existing buildings onsite.
Portland Point Road	Cornell University	44.-1-50.2	IR	199.14	On site	Landowner not interested.
11 Portland Point Road	Lucente Homes LLC	39.-1-38.2	IR/R2	98.12	.29 miles	Landowner not interested.
Warren Road	Cornell University	44.-1-7	IR	67.8	On site	Landowner not interested; wetlands onsite.
Warren Road	Cornell University	44.-1-6	IR	47	500 ft	Landowner not interested; wetlands onsite.
Cherry Road	Borgwarner Ithaca, LLC	44.-1-53.2	IR	40.5	.46 miles	Parcel too small; existing warehouses onsite.
880 Warren Road	Borgwarner Ithaca, LLC	44.-1-53.11	IR	13.59	.18 miles	Parcel too small; existing warehouse onsite.
Farrell Road	County of Tompkins: Airport Administration	44.-1-47	IR	46.8	On site	Landowner not interested.
Farrell Road	County of Tompkins	44.-1-43.3	IR	15.45	.2 miles	Landowner not interested.
Sapsucker Woods Road	County of Tompkins	44.-1-43.3	IR	11.21	.3 miles	Landowner not interested.
	County of Tompkins	44.-1-20.1	IR	26.9	.2 mi	Landowner not interested.
	New York State	44.-1-20.3	IR	15.55	On site	Parcel too small; existing buildings onsite.
	Michael Moravec	39.-1-42	IR	85.96	2.08 miles	Landowner not interested; no road frontage (landlocked).
	Ed Collins	44.-1-49	IR	10.65	.5 miles	Parcel too small to accomodate Project.
	Ed Collins	39.-1-49	IR	12	0.5 mi	No road frontage.
	Cornell University	44.-1-8	IR	20	2 miles	Landowner not interested; no road frontage (landlocked).
	Cornell University	44.-1-51	IR	10.67	2.2 miles	Landowner not interested; no road frontage (landlocked).
	Tompkins County IDA	49.-1-50.10	IR	11.92	On site	Parcel too small; existing buildings onsite.

**Full Environmental Assessment Form  
Part 1 - Project and Setting**

Section 3, Item d.

**Instructions for Completing Part 1**

**Part 1 is to be completed by the applicant or project sponsor.** Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either “Yes” or “No”. If the answer to the initial question is “Yes”, complete the sub-questions that follow. If the answer to the initial question is “No”, proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

**A. Project and Applicant/Sponsor Information.**

Name of Action or Project: NY Lansing II, LLC - Proposed Commercial Solar Facility		
Project Location (describe, and attach a general location map): North Triphammer Road (County Route 122), Town of Lansing, Tompkins County, NY (Tax Map Nos. 44.-1-1.2 and 44.-1-3.3)		
Brief Description of Proposed Action (include purpose or need): The proposed action includes the development of an approximate 3-megawatt of alternating current (MW AC) ground-mounted solar facility on two (2) tax parcels totaling 66.83± acres located on the east side of North Triphammer Road (County Route 122) (hereinafter the "subject property"). The owner would lease approximately 14.84 acres of the subject property to the applicant (i.e., NY Lansing II, LLC). The area of disturbance for the proposed project would be 16.76± acres. The solar facility would be situated along the southern portion of the southern tax parcel (44.-1-3.3). The proposed action would include the installation of solar modules with a maximum height of 15 feet, an eight (8)-foot-high deer fence around the proposed solar facility, one (1) concrete equipment pad to house electrical equipment (i.e., one [1] inverter and two [2] transformers) and electric utility lines to connect the solar panels to the existing distribution power line along the west side of the subject property. The proposed action would also include the construction of a gravel access road on the northern tax parcel (44.-1-1.2) from North Triphammer Road (County Route 122). It is noted that the project area would be seeded with a northeast solar pollinator mix. All solar power generated by the proposed action would be sold as Community Distributed Generation. This program allows subscribed participants to share the benefits of clean energy production. According to the applicant, a mix of residential and commercial customers, specifically New York State Electric and Gas (NYSEG) customers, would be able to receive a share of the solar power.		
Name of Applicant/Sponsor: NY Lansing I, LLC attn: Mollie Messenger		Telephone: 646-998-6495
		E-Mail: mollie.messenger@delawariversolar.com
Address: P.O. Box 384		
City/PO: Callicoon	State: NY	Zip Code: 12783
Project Contact (if not same as sponsor; give name and title/role):		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor): Jessie Young		Telephone: 607-533-0346
		E-Mail: jessie@youngbros.com
Address: 3105 North Triphammer Road Suite 1		
City/PO: Lansing	State: NY	Zip Code: 14882



**B. Government Approvals**

**B. Government Approvals, Funding, or Sponsorship.** (“Funding” includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Counsel, Town Board, <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No or Village Board of Trustees		
b. City, Town or Village Planning Board or Commission <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Town of Lansing Planning Board - Site Plan Approval and Decommissioning Plan Approval	TBD
c. City, Town or Village Zoning Board of Appeals <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Town of Lansing Zoning Board of Appeals - Use Variance	April 2024
d. Other local agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Town of Lansing Code Enforcement Officer - Building Permit	TBD
e. County agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Tompkins County Department of Planning and Sustainability - GML §239m Referral Tompkins County Highway Department - Highway Work Permit	TBD
f. Regional agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
g. State agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	NYSDEC - SPDES General Permit for Construction Activity NYSERDA - Partial Funding (NY-Sun Incentive Program)	TBD
h. Federal agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
iii. Is the project site within a Coastal Erosion Hazard Area?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**C. Planning and Zoning**

**C.1. Planning and zoning actions.**

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed?  Yes  No

- **If Yes**, complete sections C, F and G.
- **If No**, proceed to question C.2 and complete all remaining sections and questions in Part 1

**C.2. Adopted land use plans.**

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located?  Yes  No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located?  Yes  No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?)  Yes  No

If Yes, identify the plan(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan?  Yes  No

If Yes, identify the plan(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**C.3. Zoning**

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a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance.  Yes  No  
If Yes, what is the zoning classification(s) including any applicable overlay district?

The subject property is located within the Residential - Moderate Density (R2) Zoning District.

b. Is the use permitted or allowed by a special or conditional use permit?  Yes  No

c. Is a zoning change requested as part of the proposed action?  Yes  No

If Yes,

i. What is the proposed new zoning for the site? \_\_\_\_\_

**C.4. Existing community services.**

a. In what school district is the project site located? Ithaca City School District

b. What police or other public protection forces serve the project site?

Tompkins County Sheriff's Department

c. Which fire protection and emergency medical services serve the project site?

Lansing Fire Department provides both fire protection and emergency medical services.

d. What parks serve the project site?

N/A - the proposed use includes a commercial solar facility.

**D. Project Details**

**D.1. Proposed and Potential Development**

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Commercial solar energy facility

b. a. Total acreage of the site of the proposed action? 66.83± acres

b. Total acreage to be physically disturbed? 16.76± acres

c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 66.83± acres (The property owner would lease 14.84± acres of the subject property to the applicant.)

c. Is the proposed action an expansion of an existing project or use?  Yes  No

i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % \_\_\_\_\_ Units: \_\_\_\_\_

d. Is the proposed action a subdivision, or does it include a subdivision?  Yes  No

If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types) \_\_\_\_\_

ii. Is a cluster/conservation layout proposed?  Yes  No

iii. Number of lots proposed? \_\_\_\_\_

iv. Minimum and maximum proposed lot sizes? Minimum \_\_\_\_\_ Maximum \_\_\_\_\_

e. Will the proposed action be constructed in multiple phases?  Yes  No

i. If No, anticipated period of construction: 5 months

ii. If Yes:

- Total number of phases anticipated \_\_\_\_\_
- Anticipated commencement date of phase 1 (including demolition) \_\_\_\_\_ month \_\_\_\_\_ year
- Anticipated completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year

• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: \_\_\_\_\_



f. Does the project include new residential uses?

If Yes, show numbers of units proposed.

Yes  No  
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One Family      Two Family      Three Family      Multiple Family (four or more)

Initial Phase \_\_\_\_\_  
At completion \_\_\_\_\_  
of all phases \_\_\_\_\_

g. Does the proposed action include new non-residential construction (including expansions)?  Yes  No

If Yes,

- i. Total number of structures 6,048± solar modules
- ii. Dimensions (in feet) of largest proposed structure: 15± feet height; 3.5± feet width; and 7.9± feet length
- iii. Approximate extent of building space to be heated or cooled: \_\_\_\_\_ 0 square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage?  Yes  No

If Yes,

- i. Purpose of the impoundment: \_\_\_\_\_
- ii. If a water impoundment, the principal source of the water:  Ground water  Surface water streams  Other specify: \_\_\_\_\_
- iii. If other than water, identify the type of impounded/contained liquids and their source. \_\_\_\_\_
- iv. Approximate size of the proposed impoundment. Volume: \_\_\_\_\_ million gallons; surface area: \_\_\_\_\_ acres
- v. Dimensions of the proposed dam or impounding structure: \_\_\_\_\_ height; \_\_\_\_\_ length
- vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): \_\_\_\_\_

### D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)  Yes  No

If Yes:

- i. What is the purpose of the excavation or dredging? \_\_\_\_\_
- ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?
  - Volume (specify tons or cubic yards): \_\_\_\_\_
  - Over what duration of time? \_\_\_\_\_
- iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. \_\_\_\_\_
- iv. Will there be onsite dewatering or processing of excavated materials?  Yes  No  
If yes, describe. \_\_\_\_\_
- v. What is the total area to be dredged or excavated? \_\_\_\_\_ acres
- vi. What is the maximum area to be worked at any one time? \_\_\_\_\_ acres
- vii. What would be the maximum depth of excavation or dredging? \_\_\_\_\_ feet
- viii. Will the excavation require blasting?  Yes  No
- ix. Summarize site reclamation goals and plan: \_\_\_\_\_

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area?  Yes  No

If Yes:

- i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): The unregulated wetland areas located on the southern portions of the subject property would be disturbed as part of the proposed action.

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet of \_\_\_\_\_  
 The proposed action would involve excavation and fill associated with the construction of the proposed access road. Excavation would be approximately 0.36 acre and fill material would be approximately 0.59 acres. The proposed access road would be built upon a portion of the existing wetland vegetation. Grubbing and/or clearing would be performed as necessary for larger wooded/dense vegetated areas within the wetlands.

iii. Will the proposed action cause or result in disturbance to bottom sediments?  Yes  No  
 If Yes, describe: The proposed action would require regrading/excavation for the construction of the access road.

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation?  Yes  No  
 If Yes:

- acres of aquatic vegetation proposed to be removed: 0.95± acre to be built upon and/or removed
- expected acreage of aquatic vegetation remaining after project completion: 12.76± acres
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): Construction of the proposed access road
- proposed method of plant removal: Mechanical clearing and grubbing, as necessary.
- if chemical/herbicide treatment will be used, specify product(s): None

v. Describe any proposed reclamation/mitigation following disturbance: \_\_\_\_\_

Erosion and sedimentation control measures would be undertaken prior to and during construction.

c. Will the proposed action use, or create a new demand for water?  Yes  No

If Yes:

i. Total anticipated water usage/demand per day: \_\_\_\_\_ gallons/day

ii. Will the proposed action obtain water from an existing public water supply?  Yes  No

If Yes:

- Name of district or service area: \_\_\_\_\_
- Does the existing public water supply have capacity to serve the proposal?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No
- Do existing lines serve the project site?  Yes  No

iii. Will line extension within an existing district be necessary to supply the project?  Yes  No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_
- Source(s) of supply for the district: \_\_\_\_\_

iv. Is a new water supply district or service area proposed to be formed to serve the project site?  Yes  No

If Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- Proposed source(s) of supply for new district: \_\_\_\_\_

v. If a public water supply will not be used, describe plans to provide water supply for the project: \_\_\_\_\_

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: \_\_\_\_\_ gallons/minute.

d. Will the proposed action generate liquid wastes?  Yes  No

If Yes:

i. Total anticipated liquid waste generation per day: \_\_\_\_\_ gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): \_\_\_\_\_

iii. Will the proposed action use any existing public wastewater treatment facilities?  Yes  No

If Yes:

- Name of wastewater treatment plant to be used: \_\_\_\_\_
- Name of district: \_\_\_\_\_
- Does the existing wastewater treatment plant have capacity to serve the project?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No



- Do existing sewer lines serve the project site?
- Will a line extension within an existing district be necessary to serve the project?

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_  
\_\_\_\_\_

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site?  Yes  No

If Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- What is the receiving water for the wastewater discharge? \_\_\_\_\_

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):  
\_\_\_\_\_  
\_\_\_\_\_

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: \_\_\_\_\_  
\_\_\_\_\_

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction?  Yes  No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

\_\_\_\_\_ Square feet or 0.01± acres (impervious surface)

\_\_\_\_\_ Square feet or 66.83± acres (parcel size)

ii. Describe types of new point sources. Solar panels, concrete equipment pad, footings and gravel access road

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

The proposed design would include waters bars and five (5) rain gardens. Stormwater runoff would flow towards the rain gardens to the south of the solar facility, and to the surrounding on-site wetland areas which is where stormwater runoff currently flows.

- If to surface waters, identify receiving water bodies or wetlands: \_\_\_\_\_  
Stormwater runoff would flow towards the rain gardens to the south of the solar facility, and to the surrounding on-site wetland areas which is where stormwater runoff currently flows.

• Will stormwater runoff flow to adjacent properties?  Yes  No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater?  Yes  No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations?  Yes  No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit?  Yes  No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year)  Yes  No

ii. In addition to emissions as calculated in the application, the project will generate:

- \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide (CO<sub>2</sub>)
- \_\_\_\_\_ Tons/year (short tons) of Nitrous Oxide (N<sub>2</sub>O)
- \_\_\_\_\_ Tons/year (short tons) of Perfluorocarbons (PFCs)
- \_\_\_\_\_ Tons/year (short tons) of Sulfur Hexafluoride (SF<sub>6</sub>)
- \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)
- \_\_\_\_\_ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)?

Yes  No  
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If Yes:

- i. Estimate methane generation in tons/year (metric): \_\_\_\_\_
- ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): \_\_\_\_\_

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations?  Yes  No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

\_\_\_\_\_

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services?  Yes  No

If Yes:

- i. When is the peak traffic expected (Check all that apply):  Morning  Evening  Weekend  
 Randomly between hours of \_\_\_\_\_ to \_\_\_\_\_.
- ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): \_\_\_\_\_

iii. Parking spaces: Existing \_\_\_\_\_ Proposed \_\_\_\_\_ Net increase/decrease \_\_\_\_\_

iv. Does the proposed action include any shared use parking?  Yes  No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

\_\_\_\_\_

vi. Are public/private transportation service(s) or facilities available within 1/2 mile of the proposed site?  Yes  No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles?  Yes  No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes?  Yes  No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy?  Yes  No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: \_\_\_\_\_

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other):

\_\_\_\_\_

iii. Will the proposed action require a new, or an upgrade, to an existing substation?  Yes  No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: \_\_\_\_\_ 8:00am-6:00pm
- Saturday: \_\_\_\_\_ 8:00am-6:00pm
- Sunday: \_\_\_\_\_ N/A
- Holidays: \_\_\_\_\_ N/A

ii. During Operations:

- Monday - Friday: \_\_\_\_\_ 24/7\*
- Saturday: \_\_\_\_\_ 24/7\*
- Sunday: \_\_\_\_\_ 24/7\*
- Holidays: \_\_\_\_\_ 24/7\*

\*The site would not be occupied 24/7. It would be remotely monitored and inspections would occur as needed to ensure a properly maintained site.



m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both?

Yes  No

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If yes:

i. Provide details including sources, time of day and duration:

Temporary noise during construction would be expected. Construction would occur during non-sensitive hours (i.e., 8:00am-6:00pm Monday through Saturday with no construction on Sundays or holidays).

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen?

Yes  No

Describe: The project area would result in the clearing of 7.21± acres of woodland for the proposed solar facility. However, upon implementation of the proposed action, 20.41± acres of woodland would remain.

n. Will the proposed action have outdoor lighting?

Yes  No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen?

Yes  No

Describe:

o. Does the proposed action have the potential to produce odors for more than one hour per day?

Yes  No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage?

Yes  No

If Yes:

i. Product(s) to be stored

ii. Volume(s) per unit time (e.g., month, year)

iii. Generally, describe the proposed storage facilities:

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation?

Yes  No

If Yes:

i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices?

Yes  No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)?

Yes  No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

• Construction: 0.1 tons per month (unit of time)

• Operation : 0 tons per (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

• Construction: According to the applicant, waste would consist of office waste and cardboard items from deliveries, which would be recycled to the maximum extent practicable.

• Operation: N/A

iii. Proposed disposal methods/facilities for solid waste generated on-site:

• Construction: A refuse container would be placed on-site during construction and would be emptied by a licensed hauler as needed.

• Operation: N/A

s. Does the proposed action include construction or modification of a solid waste management facility?  Yes  No

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If Yes:

- i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): \_\_\_\_\_
- ii. Anticipated rate of disposal/processing:
  - \_\_\_\_\_ Tons/month, if transfer or other non-combustion/thermal treatment, or
  - \_\_\_\_\_ Tons/hour, if combustion or thermal treatment
- iii. If landfill, anticipated site life: \_\_\_\_\_ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste?  Yes  No

If Yes:

- i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: \_\_\_\_\_
- ii. Generally describe processes or activities involving hazardous wastes or constituents: \_\_\_\_\_
- iii. Specify amount to be handled or generated \_\_\_\_\_ tons/month
- iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: \_\_\_\_\_
- v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility?  Yes  No

If Yes: provide name and location of facility: \_\_\_\_\_

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: \_\_\_\_\_

**E. Site and Setting of Proposed Action**

**E.1. Land uses on and surrounding the project site**

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

- Urban  Industrial  Commercial  Residential (suburban)  Rural (non-farm)
- Forest  Agriculture  Aquatic  Other (specify): Institutional (NYS Department of Transportation Sub-Residency Facility)

ii. If mix of uses, generally describe:

The subject property is currently agricultural land with forested areas. The surrounding area includes residential, commercial and institutional land uses, as well as forested areas.

b. Land uses and covertypes on the project site.

Land use or Covertypes	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	0	0.01±	+0.01
• Forested	27.62±	20.41±	-7.21
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	0	0	0
• Agricultural (includes active orchards, field, greenhouse etc.)	25.50±	16.90±	-8.60
• Surface water features (lakes, ponds, streams, rivers, etc.)	0	0	0
• Wetlands (freshwater or tidal)	13.71±	12.76±	-0.95
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: Landscaping/seeded areas (inclusive of rain gardens) and gravel access road*	0	16.75±	+16.75

\*Upon implementation of the proposed action, 1.84± acres of gravel would be installed for the proposed access road.



c. Is the project site presently used by members of the community for public recreation?  Yes  No  
 i. If Yes: explain: \_\_\_\_\_

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site?  Yes  No  
 If Yes,  
 i. Identify Facilities: \_\_\_\_\_  
 \_\_\_\_\_

e. Does the project site contain an existing dam?  Yes  No  
 If Yes:  
 i. Dimensions of the dam and impoundment:  
 • Dam height: \_\_\_\_\_ feet  
 • Dam length: \_\_\_\_\_ feet  
 • Surface area: \_\_\_\_\_ acres  
 • Volume impounded: \_\_\_\_\_ gallons OR acre-feet  
 ii. Dam's existing hazard classification: \_\_\_\_\_  
 iii. Provide date and summarize results of last inspection: \_\_\_\_\_  
 \_\_\_\_\_

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility?  Yes  No  
 If Yes:  
 i. Has the facility been formally closed?  Yes  No  
 • If yes, cite sources/documentation: \_\_\_\_\_  
 ii. Describe the location of the project site relative to the boundaries of the solid waste management facility: \_\_\_\_\_  
 \_\_\_\_\_  
 iii. Describe any development constraints due to the prior solid waste activities: \_\_\_\_\_  
 \_\_\_\_\_

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste?  Yes  No  
 If Yes:  
 i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred: \_\_\_\_\_  
 \_\_\_\_\_

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site?  Yes  No  
 If Yes:  
 i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply:  Yes  No  
 Yes – Spills Incidents database Provide DEC ID number(s): \_\_\_\_\_  
 Yes – Environmental Site Remediation database Provide DEC ID number(s): \_\_\_\_\_  
 Neither database  
 ii. If site has been subject of RCRA corrective activities, describe control measures: \_\_\_\_\_  
 \_\_\_\_\_  
 iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database?  Yes  No  
 If yes, provide DEC ID number(s): \_\_\_\_\_  
 iv. If yes to (i), (ii) or (iii) above, describe current status of site(s): \_\_\_\_\_  
 \_\_\_\_\_

Section 3, Item d.

v. Is the project site subject to an institutional control limiting property uses?  Yes  No

- If yes, DEC site ID number: \_\_\_\_\_
- Describe the type of institutional control (e.g., deed restriction or easement): \_\_\_\_\_
- Describe any use limitations: \_\_\_\_\_
- Describe any engineering controls: \_\_\_\_\_
- Will the project affect the institutional or engineering controls in place?  Yes  No
- Explain: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**E.2. Natural Resources On or Near Project Site**

a. What is the average depth to bedrock on the project site? \_\_\_\_\_ 3± feet below grade surface (bgs)

b. Are there bedrock outcroppings on the project site?  Yes  No  
 If Yes, what proportion of the site is comprised of bedrock outcroppings? \_\_\_\_\_ %

c. Predominant soil type(s) present on project site:

Langford channery silt loam, 2-8% slopes (LaB)	26 %
Tuller channery silt loam, 0-6% slopes (TeA)	24 %
Lordstown channery silt loam, 5-15% slopes (LnC)	21 %

d. What is the average depth to the water table on the project site? Average: \_\_\_\_\_ 20± feet bgs\*

e. Drainage status of project site soils:

<input checked="" type="checkbox"/> Well Drained:	34 % of site
<input checked="" type="checkbox"/> Moderately Well Drained:	26 % of site
<input checked="" type="checkbox"/> Poorly Drained	40 % of site

f. Approximate proportion of proposed action site with slopes:

<input checked="" type="checkbox"/> 0-10%:	84 % of site
<input checked="" type="checkbox"/> 10-15%:	16 % of site
<input type="checkbox"/> 15% or greater:	_____ % of site

g. Are there any unique geologic features on the project site?  Yes  No  
 If Yes, describe: \_\_\_\_\_  
 \_\_\_\_\_

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)?  Yes  No

ii. Do any wetlands or other waterbodies adjoin the project site?  Yes  No

If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency?  Yes  No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Lakes or Ponds: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Wetlands: Name Federal Waters \_\_\_\_\_ Approximate Size \*See below \_\_\_\_\_
- Wetland No. (if regulated by DEC) \_\_\_\_\_

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies?  Yes  No  
 If yes, name of impaired water body/bodies and basis for listing as impaired: \_\_\_\_\_  
 \_\_\_\_\_

i. Is the project site in a designated Floodway?  Yes  No

j. Is the project site in the 100-year Floodplain?  Yes  No

k. Is the project site in the 500-year Floodplain?  Yes  No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer?  Yes  No  
 If Yes:  
 i. Name of aquifer: \_\_\_\_\_

\*There are areas on the eastern portion of the subject property with perched water at approximately 2 feet bgs and 6 feet bgs.  
 \*The EAF Mapper indicates the presence of federal waterbodies on or adjoining the subject property. Review of the U.S. Fish and Wildlife Services National Wetlands Inventory (NWI) Mapper indicates that a 13.14-acre Freshwater Forested/Shrub Wetland habitat classified as PFO1/4E is located on the southeastern portion of the southern tax parcel (44.-1-3.3) and adjoining area. It is noted that review of the NYSDEC Environmental Resource Mapper indicates that there are no state-regulated freshwater wetlands or streams located on or adjacent to the subject property.



<p>m. Identify the predominant wildlife species that occupy or use the project site: _____</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Rabbits _____</td> <td style="width: 33%;">White-tailed deer _____</td> <td style="width: 33%;"></td> </tr> <tr> <td>Grey squirrels _____</td> <td>Field rodents _____</td> <td></td> </tr> <tr> <td>Raccoons _____</td> <td></td> <td></td> </tr> </table>	Rabbits _____	White-tailed deer _____		Grey squirrels _____	Field rodents _____		Raccoons _____			<div style="border: 1px solid black; padding: 2px; display: inline-block;">Section 3, Item d.</div>
Rabbits _____	White-tailed deer _____									
Grey squirrels _____	Field rodents _____									
Raccoons _____										
<p>n. Does the project site contain a designated significant natural community? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Describe the habitat/community (composition, function, and basis for designation): _____</p> <p style="margin-left: 20px;">ii. Source(s) of description or evaluation: _____</p> <p style="margin-left: 20px;">iii. Extent of community/habitat:</p> <ul style="list-style-type: none"> <li>• Currently: _____ acres</li> <li>• Following completion of project as proposed: _____ acres</li> <li>• Gain or loss (indicate + or -): _____ acres</li> </ul>										
<p>o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Species and listing (endangered or threatened): _____</p> <p>_____</p> <p>_____</p>										
<p>p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Species and listing: _____</p> <p>_____</p>										
<p>q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If yes, give a brief description of how the proposed action may affect that use: <u>According to the applicant, there may be areas on or near the subject property that are occasionally used for hunting. Upon implementation of the proposed action, hunting could still occur on or near the subject property; however, no future hunting would occur on the solar project site.</u></p>										
<p><b>E.3. Designated Public Resources On or Near Project Site</b></p>										
<p>a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes, provide county plus district name/number: _____</p>										
<p>b. Are agricultural lands consisting of highly productive soils present? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p style="margin-left: 20px;">i. If Yes: acreage(s) on project site? <u>The subject property contains 17.5± acres of Soil Group 3; however, only 2.21± acres would be disturbed as part of the proposed action.</u></p> <p style="margin-left: 20px;">ii. Source(s) of soil rating(s): <u>United State Department of Agriculture Web Soil Survey and NYSERDA 2022 Soils Data</u></p>										
<p>c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature</p> <p style="margin-left: 20px;">ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____</p> <p>_____</p> <p>_____</p>										
<p>d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p style="margin-left: 20px;">i. CEA name: _____</p> <p style="margin-left: 20px;">ii. Basis for designation: _____</p> <p style="margin-left: 20px;">iii. Designating agency and date: _____</p>										

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commission Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?  Yes  No

If Yes:

i. Nature of historic/archaeological resource:  Archaeological Site  Historic Building or District

ii. Name: \_\_\_\_\_

iii. Brief description of attributes on which listing is based: \_\_\_\_\_

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?  Yes  No

g. Have additional archaeological or historic site(s) or resources been identified on the project site?  Yes  No

If Yes:

i. Describe possible resource(s): \_\_\_\_\_

ii. Basis for identification: \_\_\_\_\_

h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource?  Yes  No

If Yes:

i. Identify resource: Lansing Town Park; Sunset Park; Stewart Park; Allen H. Treman State Marine Park; Cornell Botanical Gardens; Thompson Park; Conway Park; Strawberry Fields Park

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): Town Park; Town Park; Town Park; State Park; Botanical Gardens; Village Park; Village Park; Village Park

iii. Distance between project and resource: varying distances within 5 miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?  Yes  No

If Yes:

i. Identify the name of the river and its designation: \_\_\_\_\_

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666?  Yes  No

**F. Additional Information**

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

**G. Verification**

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name NY Lansing II, LLC  
Attn: P.W. Grosser Consulting, Inc. as Environmental Consultant Date 4/5/2024

Signature  Title Sr. Environmental Planner/Project Manager  
 Katelyn Kaim, AICP



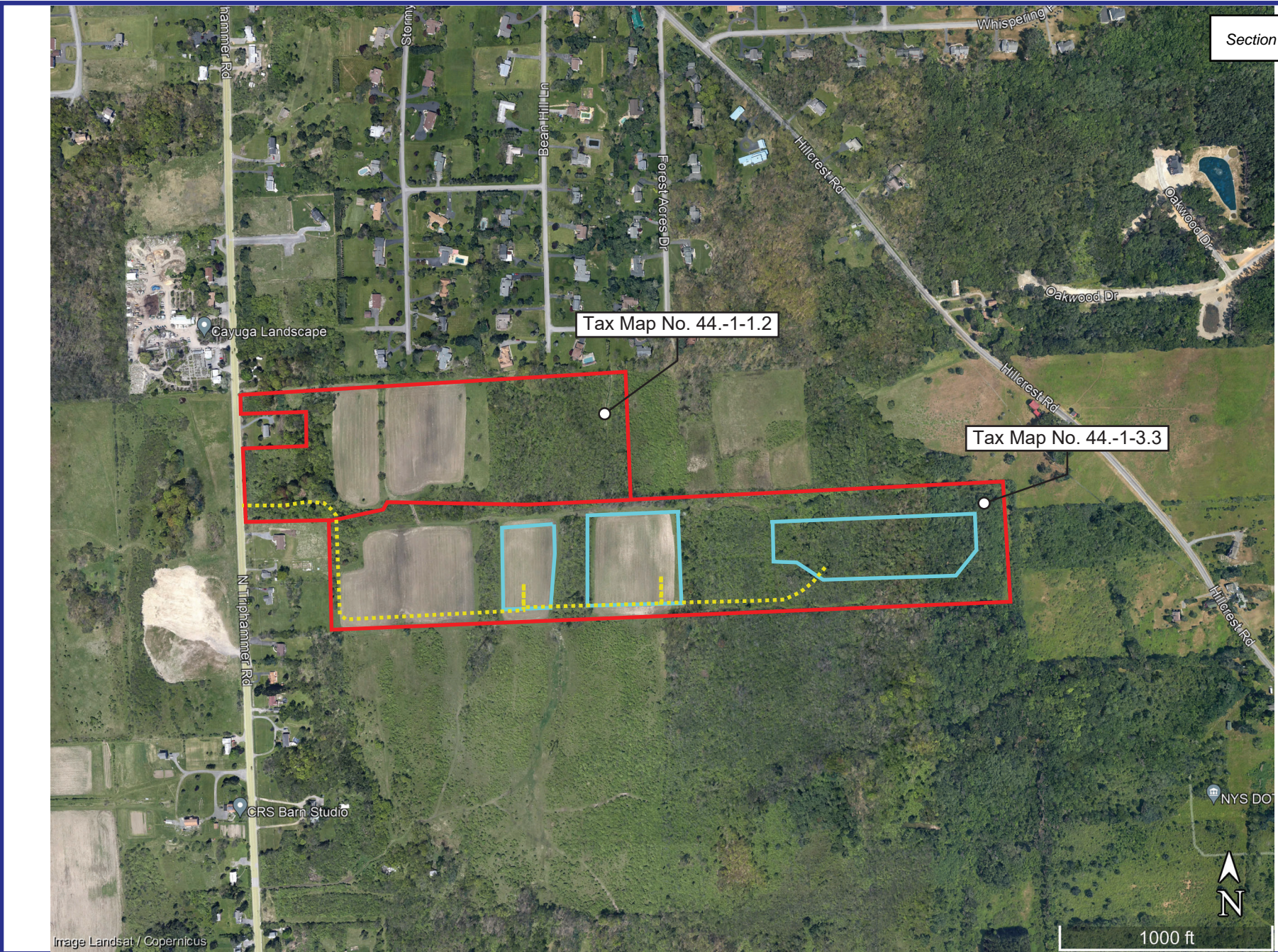
**Disclaimer:** The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.2.j. [100 Year Floodplain]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.2.k. [500 Year Floodplain]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.2.l. [Aquifers]	No

E.2.n. [Natural Communities]	No	
E.2.o. [Endangered or Threatened Species]	No	Section 3, Item d.
E.2.p. [Rare Plants or Animals]	No	
E.3.a. [Agricultural District]	No	
E.3.c. [National Natural Landmark]	No	
E.3.d [Critical Environmental Area]	No	
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.	
E.3.f. [Archeological Sites]	No	
E.3.i. [Designated River Corridor]	No	





- Subject Property
- Proposed Access Road
- Proposed Project Area (approximate)

All boundaries are approximate  
 Source: Google Earth, 2024

**Site Location Map**  
 NY Lansing II, LLC  
 North Triphammer Road  
 Town of Lansing, Tompkins County, NY



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 pwgc.info@pwgrosser.com





Draft #: 1 Date: 4/8/2024

Approved Date: \_\_\_\_\_

## Project Summary

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### **North Triphammer Road Project #1 and #2**

**Project #1 - SBL: #144-1-1.2 5MW Solar Facility**

**Project #2 - SBL#: 44-1-3.3 3MW Solar Facility**

Prepared for:

**Town of Lansing**

**Tompkins County, New York**

Prepared by:  
NY Lansing I, LLC & NY Lansing II, LLC  
P.O. Box 384  
Callicoon NY, 12783



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**ACRONYMS**

- AC Alternating Current
- DC Direct Current
- kV Kilovolt
- MW Megawatt
- PV Photovoltaic
- roHS Restriction of Hazardous Substances





## INTRODUCTION

Project Owner has prepared this project summary for the proposed development, installation, and operation of a Solar Energy Facility (“Solar Facility”) including an interconnection line to interconnect the Solar Facility to the Utility electrical grid. The proposed Solar Facility and Interconnection Line are referred to collectively as the Project.

This Project is being submitted to the Town as part of the application with respect to the special use permit and site plan review by the Town as set forth in the Code of the Town’s Solar Law. The Solar Facility is considered a Solar Energy Facility.

The proposed site for the Solar Facility Project Site is on land within the Property. Lot Coverage was calculated by total impervious surface coverage which includes flat panel area, access road, rain gardens as a percentage of the area of the Solar Facility Project Site. The Property access is located north of 2699 N Triphammer Road, within the jurisdiction of the Town.

The connection of the Solar Facility to the Utility electrical grid, including the specific interconnection equipment, is pursuant to a standard Interconnection Agreement executed between the Project Owner and Utility. The Solar Facility will have a total generation capacity of not more than 5.0 MW AC for project #1 and 3 MW AC for Project #2. The generation capacity will be limited by the final site plan approved by the Town.

Energy generated from the Solar Facility will be distributed to the Utility for use by the Utility’s customers and directly benefit customers enrolled in a Community Solar Program provided by or on behalf of the Project Owner. The objective of the Community Solar Program is to offer electricity at a discount to the Utility’s rate. The Project Owner’s goal is to provide residences and businesses in the Town with the opportunity to enroll in a Community Solar Program.

The Solar Facility design will adhere to technical and environmental requirements in accordance with current federal state and Town laws, including all applicable codes, regulations, and industry standards as referenced in the and Building Code, the Energy Code, and the Solar Law.

**Key Attributes of the Project Include:**

- Direct conversion of sunlight to electricity without generation of waste materials.
- Solar power generated producing no carbon emissions or air pollutants.
- Minimal ambient noise generated during solar power generation, no nighttime noise.
- Minimal traffic disturbance during Project operational lifespan.
- No use of public water utilities.
- Uniform Array Height with minimal visual effects
- Non-array structures approximately 8 feet in height to minimize visual effects.
- Existing vegetation around the Project Site will minimize visual effects.
- Modules secured using a racking system minimizing ground grading and ground disturbance.

This Project Summary includes general descriptions of and guidelines for design, construction, operation, maintenance, and decommissioning of the Projects. Design, construction, operation, maintenance, and decommissioning of the Projects will meet or exceed the requirements of the National Electrical Safety Code and U.S. Department of Labor Occupational Safety and Health Standards, as well as Town requirements for the safety and protection of landowners and Property. Project Owner may submit additional materials/documents regarding the above containing more detail (including a separate Decommissioning Plan and Operations and Maintenance Plan).

The Project Owner has compiled this Project Summary to the best of its knowledge, based upon currently available information. Certain additional reports, such as topography, geotechnical, and environmental, have been completed.

**THE INFORMATION CONTAINED IN THIS PROJECT SUMMARY IS NOT INTENDED TO DESCRIBE ALL RELEVANT PROJECT INFORMATION AND IS QUALIFIED IN ITS ENTIRETY BY THE PROJECT OWNER'S FINAL APPLICATION AND SITE PLANS APPROVED BY THE TOWN DURING THE TOWN'S REVIEW PROCESS.**



### 1.1. Purpose

Provide a cost-effective source of renewable solar electricity. Additional objectives include:

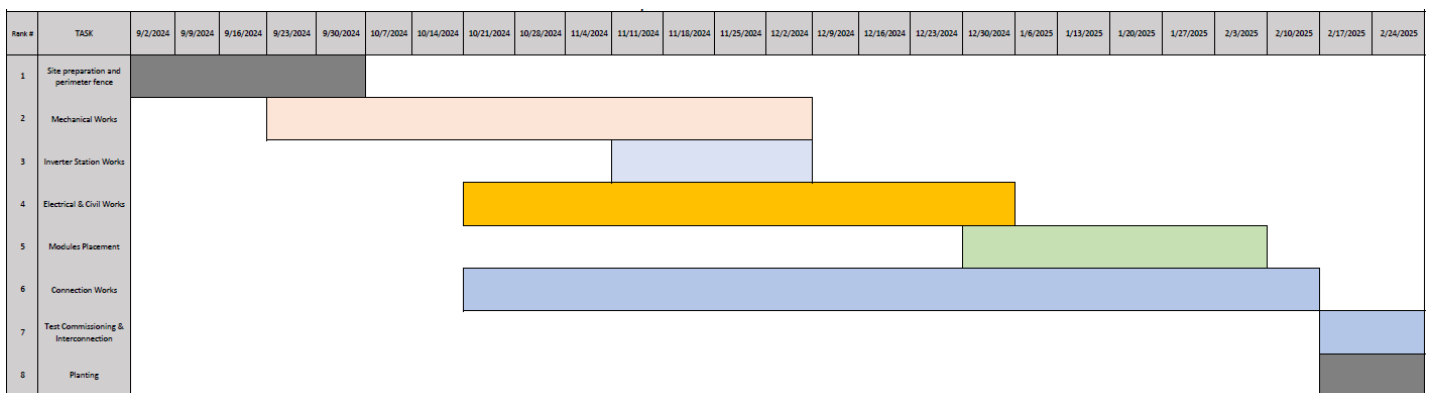
- Develop a solar generation facility that is feasible, quick to construct and easy to operate while providing the Utility and its customers with a cost-effective, cleaner energy alternative.
- Establish emission-free solar electricity and reduce greenhouse gas emissions while avoiding, minimizing, and mitigating the impacts to the environment.
- Generate electricity without local utility needs.
- Provide other important economic and environmental benefits to the Utility and the Town, including improving local air quality and public health, developing local energy sources, promoting local jobs, and diversifying the energy supply.
- Contribute to the State of New York renewable energy goals.

Based on historical information, the average energy usage for a standard home is 10,000 kWh/year. The proposed Solar Facility for Project #1 would generate approximately 7,700,000 kWh/year, equivalent to the electricity consumption of 700 homes. The proposed Solar Facility for Project #2 would generate approximately 4,900,000 kWh/year, equivalent to the electricity consumption of 490 homes. The Project Owner’s goal is to provide residents and businesses in the Town the opportunity to enroll in a Community Solar Program.

### 1.2. Estimated Construction Schedule

Construction of the Project is estimated to take approximately 6 months to complete. An example timeline is below:

**Table 1. Gantt’s Diagram**



## 2.0. PROJECT DESCRIPTION

### 2.1. Project Site and Control

Selection of the Project Site over other locations is based on several site criteria including:

- Contiguous site with suitable topography of adequate size to host the Solar Facility.
- Proximity to existing Utility electrical grid.
- Availability, lease agreement with current or future landowner.
- Avoiding sensitive areas, such as rivers, lakes, etc.
- Minimizing visual impact by utilizing the topography and existing vegetation on the property.
- Good highway access for construction, operation, and maintenance activities.

The Project Site will be leased from the Property Owner and/or purchased.

The proposed Project Sites are located on the Property (See Figure 1a and the Property parcel with purple marker). Project Site access will be from the Access Point (see Figure 1b). There will need to be a proposed lot line improvement for this project, which will be sent to the Town in a future submission and the Project summary will be updated in a future draft.

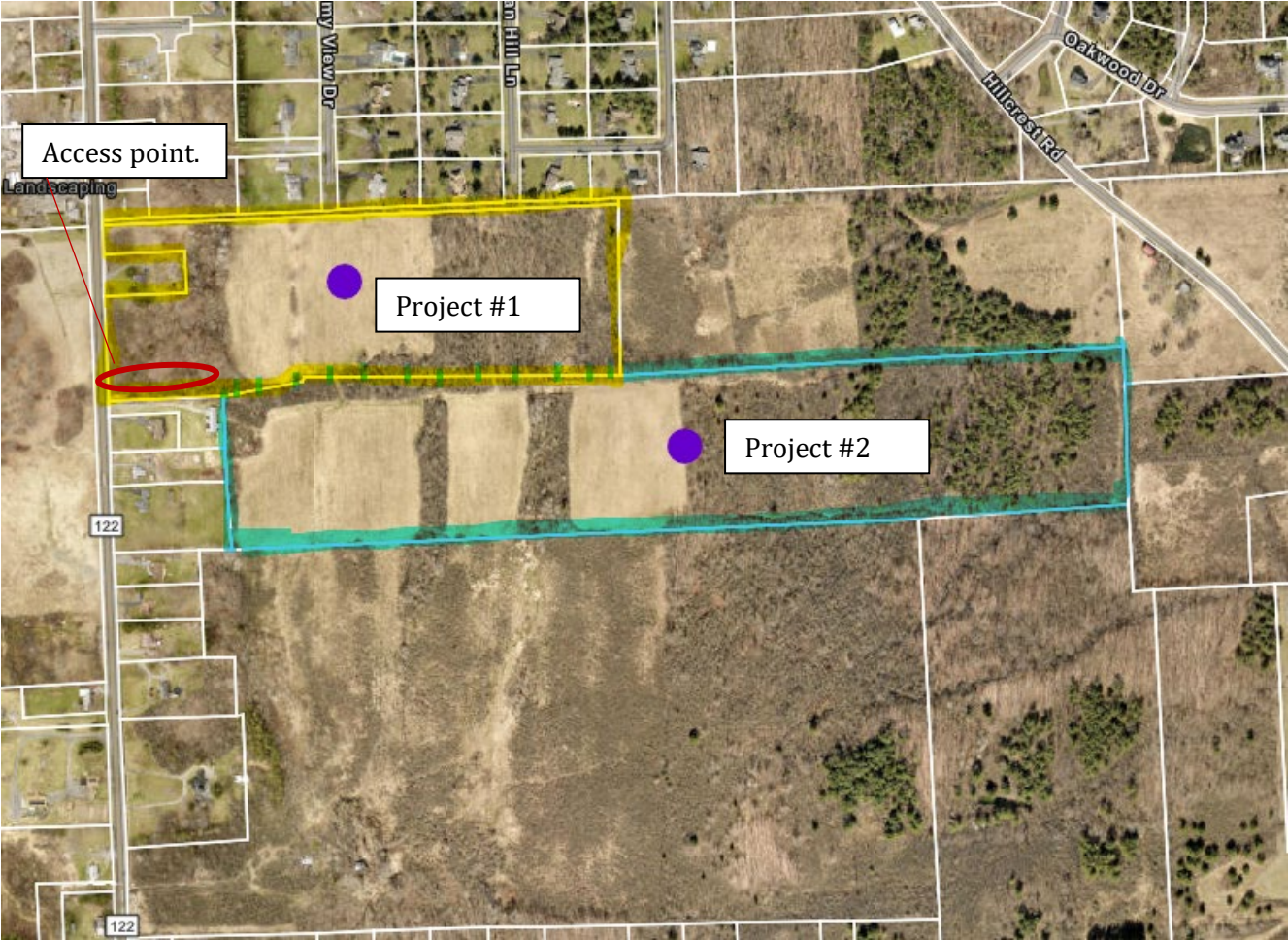




Figure 1a. Property Location



Figure 1b. Access Point

## 2.2. General Overview of Solar Facility

A grid-connected photovoltaic (“PV”) power system is an electricity generating solar system that is connected to the Utility electrical grid. A grid-connected system consists of solar modules one or more inverters, a power conditioning unit and grid connection equipment. The proposed installation is composed of a field of photovoltaic generators (See Figure 2).

The Solar Facility is composed of monocrystalline photovoltaic modules. Modules are electrically interconnected in series of strings and can be mounted on racking that can either 1) track the path of the sun or 2) is fixed at orientation and tilt angle.

To collect all DC output, an inverter station and step-up power transformer will be interconnected, conditioning the electric parameters for feeding energy to the Utility electric distribution network. Power

generated from the modules will be transferred via shielded cables within underground conduits to switch gear which forms part of the main power generation facility.

The modules are electrically protected, and above-grade wires are both shielded and secured to avoid exposure or accidental contact. All necessary protections for this type of facility and supporting structures for photovoltaic modules are included.

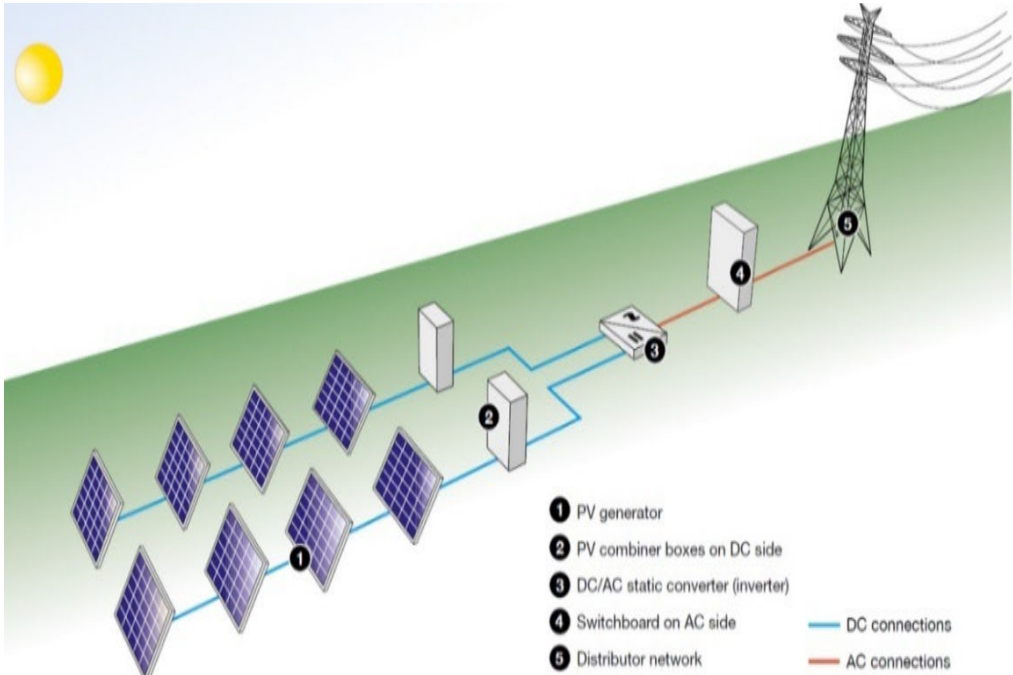


Figure 2. Diagram of a Grid-Connected Photovoltaic Facility

**2.3. Acreage and General Dimensions of the Project Site**

The Property is owned by the Property Owner, and the Project Site is a part of the Property. Surface Coverage is based on total impervious surface area including the flat panel area, access road, rain gardens occupying the land as a percentage of the Project Site. The Interconnection Line assumes a maximum of 20 ft of temporary, and 2 ft. permanent wide trench.

**2.4. Solar Facility**

The following sections describe the major components of the Solar Facility. *Selected manufacturers are not indicated as equipment selection may change during the design and permitting process due to market and economic conditions.* The final selected equipment is expected to be substantially similar to those proposed.



**2.4.1. Summary of Project Components**

Supporting structures are set considering economic, technical and land conditions for the modules to capture the most amount of solar radiation and obtain the best solar yield possible. The arrays are distributed into rows and consider surrounding shadings in the array design. There are open corridors between the rows of modules to perform construction and allow maintenance. The inverter station, which contains the transformer, will connect the Solar Facility to the existing Utility distribution network.

**2.4.2. Solar Modules**

The module manufacturer will depend on the availability of the modules during the procurement period. Manufacturer equipment specification sheets will be provided to the Town along with the Project’s building permit application. The solar modules will meet New York’s Uniform Fire Prevention and Building Code Standards. Expected minimum requirements of the modules are:

- Conform with IEC 61215, IEC 61730, IEC 61701, UL 61730 Solar Project Standards and other certificates.
- Project Standards and other certificates.
- High Module Conversion Efficiencies
- Dimensions 2384x1096x35mm
- Cell type: Monocrystalline
- Maximum System Voltage: 1500 Vdc (UL)
- Efficiency up to 21 %
- 30 years power output warranty
- Electrical Characteristics STC
- Values at Standard Test Conditions STC (Air Mass AM1.5, Irradiance 1000W/m<sup>2</sup>, Cell Temperature 25°)

**2.4.3. Supporting Structures**

Evaluation of the structural design of support for the modules shall account for permanent loads, snow and wind loads, seismic conditions, structural calculation and foundations, module sizing, control of connections, geotechnical analysis and effects of temperature changes in accordance with applicable law and Building Code.

The metal supporting bases for modules shall be hot dip galvanized steel components with a minimum average thickness of 70µm as ISO/EN 1461 or equivalent or by an appropriate anodized aluminum of heavy-duty type and alloy for the better anti-corrosion protection of the construction. All connections including bolts/nuts, shall be of A2 stainless steel or compliant with other industry standard practices appropriate for the application defined.

To minimize ground disturbance, the supporting bases will be pile driven into the ground, considering the results of a geotechnical study. Following are several examples of the potential support structure considered for the Project.

Tracker Racking in Stowed Position:

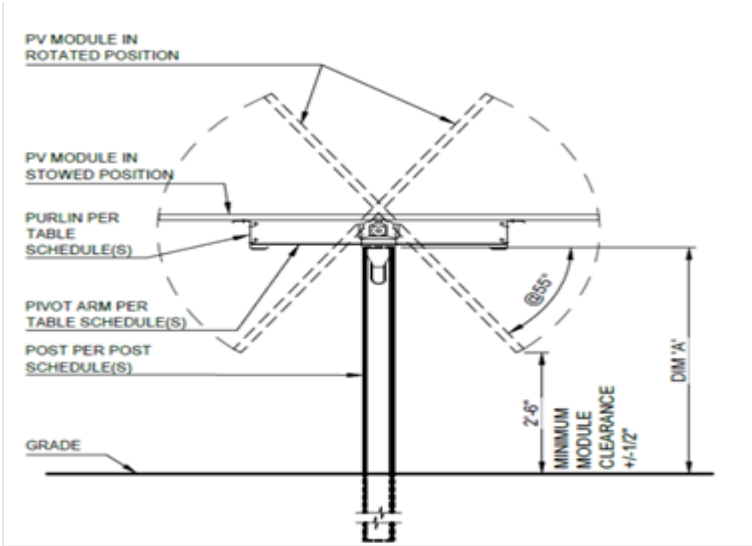


Figure 3a. Supporting Structure Overview (Tracker)

Key points of the Supporting Structure:

- Portrait mounting
- Mono-post anchored to the ground
- All connections bolted without welding.
- One tie bar and a crossbar in which the straps are supported

The module height above ground once attached to the tracker racking, is expected to be approximately 3 feet at the low-end with minimal visual effects at the Maximum Array Height.



Fixed-Tilt Racking:



Figure 3b. Supporting Structure Overview

In the case of fixed-tilt racking, the module height above ground once attached to the racking, is expected to be approximately 3 feet at the low-end and have visual effects at the Maximum Array Height.

## 2.5. Inverter and Transformer Station (“MV Station”)

The MV Station is inside a standard-sized outdoor container protected with weather-proof material to NEMA 4X protection degree and houses an inverter, transformer, power distribution and monitoring unit. The MV Station converts DC current generated from the PV array into grid-compatible AC current, which can be directly fed into the medium voltage grid.

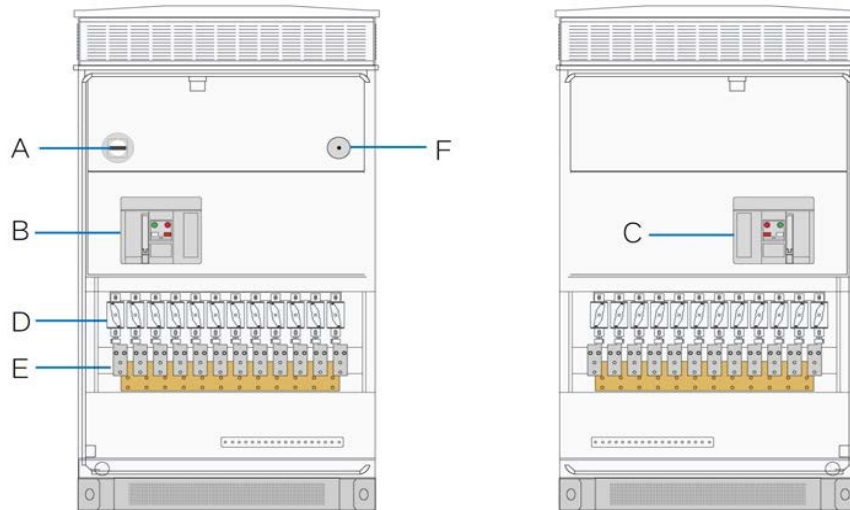
### 2.5.1. Inverter

The inverter, part of a MV Station, shall meet at least the following requirements, international standards and tested by:

- UL 1741, UL 1741 SA
- IEEE 1547
- Rule 21
- NEC Code

DC load break switches and AC circuit breakers are provided on the inverter.

The DC cabinet of the inverter is shown in the following figure:



*Figure 4. Inverter (Example)*

No.	Name	Description
A	AC maintenance switch	Disconnect the switch before maintaining AC cabinet components.
B	QS1, DC load break switch 1	Disconnect the switch before maintaining AC cabinet components.
C	QS2, DC load break switch 2	Connect/disconnect the DC side of the unit 2.
D	Fuse	---
E	DC connection area	The upper part of the copper bar is for positive cable connection area while the lower part is for negative cable connection.
F	DC maintenance switch	Disconnect the switch before maintaining DC cabinet components.



### 2.5.2. Transformer

The transformer, part of a MV Station, is designed for installation at medium and large-scale utility solar facilities. Critical power connections are completed and tested in a factory environment and the pre-tested unit is shipped to the field ready for the final field connections. Factory manufactured MV Stations reduce installation and commissioning time. The all-in-one solution simplifies the installation, saves space and the visual impact is lower than other configuration options.

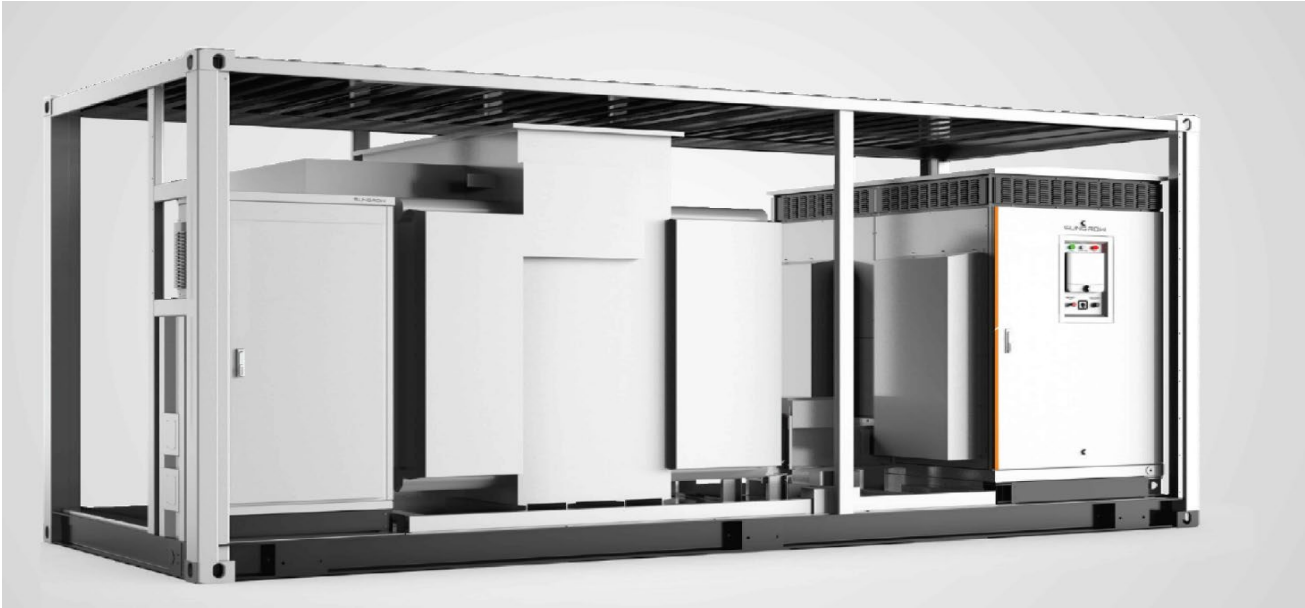


Figure 5. “All-in-one” LV Cabinet, Inverter, & Transformer Station

### 2.6. Electrical Installation

This section contains the remainder of the electrical devices required in the Solar Facility.

#### 2.6.1. DC Electric Switchboards

Within each array, strings of modules are to be combined in parallel in a combiner box with a protection rating of NEMA 3R or above. The combiner boxes will have at least the following characteristics:

- Suitable for outdoor installation
- Designed for UV resistance
- Protection isolation
- Grounding copper tape
- Anti-condensation filter
- Mounting lugs and required nuts and bolts for installation
- Self-extinguishing and halogen-free materials
- Cable glands for output DC cable (up to 4x1x300mm<sup>2</sup> Al XLPE cable; defined per project) and signaling cable input & output
- Cable glands for communication cable and grounding cable
- DC fuse in negative pole per string
- Coverage of electrical items with methacrylate plate
- Disconnecting isolators 1500VDC must comply with applicable standards
- Fitted with surge protection Device, 3pole, 1500Vdc, 40kA
- Fully labeled and color-coded wiring (as per project all strings)
- Appropriate number of string inputs and associated fuse sizing
- In case of armored cable, glands have to be able to earth the aluminum armor

Operational ambient conditions are to be as follows:

- Temperature: 77.0°F to + 10.0 °F
- Relative humidity: 15 to 95 %

**2.6.2. Wiring**

Two types of wiring will be required in the Project, from modules to DC Box, and from DC Box to the general DC Disconnect Switch. Cables will meet the requirements of UL standard 4703, appropriate for solar photovoltaic applications.

Wiring will consist of single conductor, sunlight-resistant, direct burial photovoltaic wire, 2000 V for interconnection wiring of grounded and ungrounded photovoltaic power systems with the following features:

- Rated 90°C wet and dry
- Rated for direct burial
- Deformation-resistant at high temperatures
- Excellent moisture resistance, exceeds UL 44
- Stable electrical properties over a broad temperature range
- Increased flexibility
- Excellent resistance to crush and compression cuts
- Resistant to most oils and chemicals
- UV/sunlight-resistant
- Meets cold bend and cold impact tests at -40°C

**2.6.3. Grounding**

Metal enclosures containing electrical conductors or other electrical components may become energized as a result of insulation or mechanical failures. Energized metal surfaces, including the metal frames of modules, can present electrical shock and fire hazards.

By properly bonding exposed metal surfaces together and to the earth, the potential difference between earth and the conductive surface during a fault condition is reduced to near zero, reducing electric shock potential. The proper bonding to earth by the equipment grounding system is essential, because most of the environment (including most conductive surfaces and the earth itself) is at earth potential. The conductors used to bond the various exposed metal surfaces together are known as equipment grounding conductors (“EGC”).

The metallic device used to make contact with the earth is the *grounding electrode*. The conductor that connects the central grounding point (where the equipment grounding system is connected to the grounded circuit conductor on grounded systems) and a grounding electrode that is in contact with the earth is known as the *grounding electrode conductor* (“GEC”).

Combined Direct-Current Grounding-Electrode Conductor and Alternating-Current Equipment Grounding Conductor: An unspliced, or irreversibly spliced, combined grounding conductor shall be run from the



marked DC grounding electrode conductor connection point along with the AC circuit conductors to the grounding busbar in the associated ac equipment. See Figure 6.

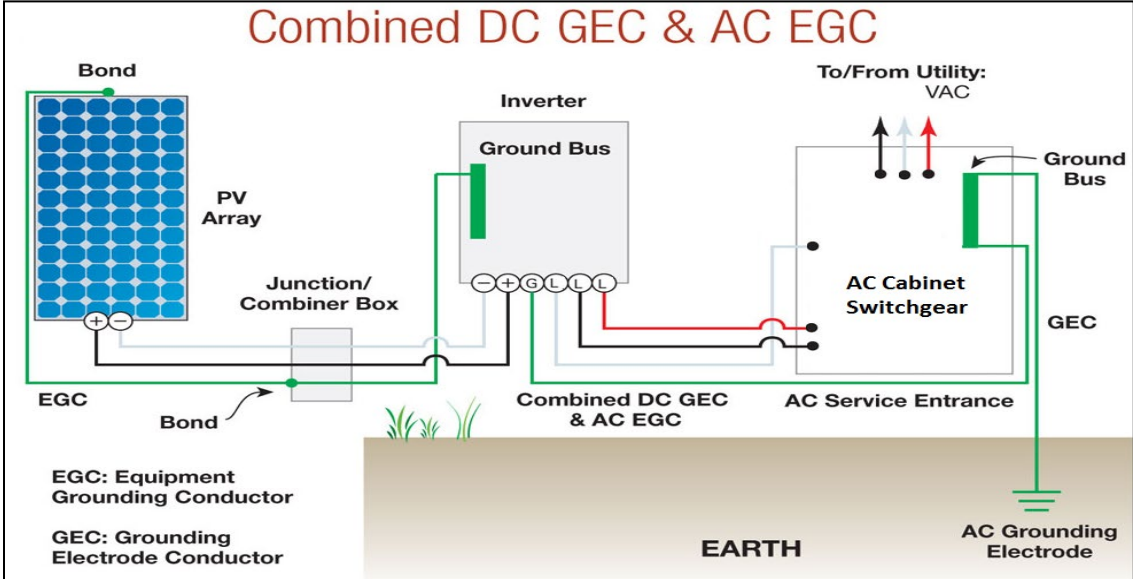


Figure 6. Combined EGC/GEC grounding routing Solar Facility

2.7. Monitoring

Sensors include:

- Combiner Box temperature
- Solar irradiation
- Panel temperature
- Ambient temperature
- Wind speed

All sensors such as the weather station and pyranometers must use dedicated MODBUS Channels for the collection of measurements. The MODBUS channels cannot exceed a maximum of 16 devices (pyranometers, temperature sensors, wind sensors, weather stations) with no other devices such as string monitors, inverters or relays are to be connected to the dedicated MODBUS channel for the weather sensors and pyrometer. All data sent to the Industrial PC (Supervisor software) must be received using MODBUS TCP protocol.

The monitoring system considered is centralized. This becomes possible by using the Inverter Station as a core data collection through a basic set of equipment. It is first necessary to obtain the values of the different variables to monitor. The monitoring system can monitor the AC installation and the DC installation (panels). For monitoring smaller parts of the DC installation at the inverter level there are more Combiner Boxes of lesser strings.

The best way to capture inverter information is using a system to provide communication with a PC. The inverter's own hardware is used for measurement, (hardware that is already included with the central

inverter). The price of a centralized monitoring system is usually lower than other solutions. Measuring switchboards have the advantage that they can monitor multiple system parameters, such as level of harmonics, phase equilibrium, etc.

The inverter station is a central monitoring system of the Solar Facility with these features:

- Grid visualization
- Generator visualization
- Inverter visualization
- Clearly visible external warning signals concerning voltage at the base of pad-mounted transformer and substation
- Registers
- Fault history visualization
- Warning history visualization
- Status visualization
- Internal debug
- \* SI visualization menu

**2.8. Mid Voltage Connection**

The Solar Facility will satisfy the Utility technical interconnection requirements in order to work in parallel with the Utility distribution system. The Project will meet the following requirements:

- Voltage response range
- Frequency response range
- Inverters certified
- Protective function requirements
- Metering
- Operating requirements
- Dedicated transformer
- Disconnect switch
- Power quality
- Power factor
- Islanding
- Equipment certification
- Verification testing
- Interconnection inventory

**2.8.1. Mid Voltage Interconnection Line**

The proposed Interconnection Lines would be designed for 12.5 kV three-phase Wye-grounded (three conductors) circuits. The Interconnection Line will connect the transformer to the existing electrical grid on the Substation Circuit connecting to the Utility substation bank. The Interconnection Line will be underground until required by the Utility to interconnect to the Utility electrical grid.

The Interconnection Line will be installed in underground conduit. The conductor will be rated at 15 kV, backfilled with select and native backfill, and compacted. The main characteristics of the wire are:

- EPR/Copper Tape Shield with overall LSZH
- Conductor 1350 Aluminum Compact Class B strand
- Three conductor and grounding wire in contact with metallic shielding cape
- Medium-Voltage Power
- Shielded 15 kV
- For use in aerial, conduit, open tray and underground duct installations
- Electrical stability under stress
- Chemical-resistant
- Meets cold bend test at -35°C
- 105°C rating for continuous operation



- UL Type MV-105, 133%
- Ins. Level, 220 Mils
- Rated at 105°C
- Excellent heat and moisture resistance
- Excellent flame resistance
- Flexibility for easy handling
- Low friction for easy pulling
- 140°C rating for emergency overload conditions
- 250°C rating for short circuit conditions
- RoHS Compliant
- According to National Electrical Code (NEC), UL 1072 and more compliances

### 2.8.2. Point of Common Coupling (“PCC”)

The PCC is the point where the Project interconnects with the electric Utility grid.

**Table 3. PCC Configuration Summary**

Line Voltage at PCC (kV)	34.5
PCC Line Type	3 phase
PCC Line Configuration	Wye-Wye

### 2.8.3. AC Generator Disconnect Switch

In order to isolate and protect the Solar Facility from the Utility electrical grid, a load break disconnecting switch is necessary. The 3-phase disconnect switch located between the generating equipment and interconnection at the PCC, must be manual, visible, lockable and gang-operated. The Project Owner will have 24-hour/7-day unlimited access and control of this isolation switch.

The disconnect switch must be rated for the voltage and current requirements of the installation. Disconnecting means shall be rated to interrupt the maximum generator output; meet applicable Underwriters Laboratories (UL), American National Standards Institute (ANSI), and Institute of Electrical and Electronic Engineering (IEEE) standards; and shall be installed to meet the NEC and all applicable local, state, and federal codes. It will be clearly marked with permanent larger letters: “Generator Disconnect Switch”.

In accordance with the Project Owner's safety rules and practices, this isolation device must be used to establish a visually open, working clearance boundary when performing maintenance and repair work. The designated generator disconnect also must be accessible and lockable in the open position and have provisions for both Project Owner and Utility padlocks and be capable of being tagged and grounded on the Project Owner side by Project Owner personnel.

The visible generator disconnect switch shall be a gang-operated, blade-type switch (knife switch) meeting the requirements of the NEC and nationally recognized product standards. Installation will also require a recloser with remote control and data access to be installed to:

- Monitor voltage current
- Provide for remote disconnect
- Act as a Utility controlled redundant protection system

## 2.9. Operation and Maintenance

The Property operation and maintenance plan requirement for a Solar System set forth in the Solar Law reads as follows:

### Local Law #3 of 2020 Section 802.18.1 (ix)

*ix. An operation and maintenance plan, including description of continuing Solar Energy Facility maintenance and property upkeep, such as mowing and trimming, safe access to the installation, as well as general procedures for operational inspections and maintenance of the installation.*

*x. An operation and maintenance plan, including description of continuing Solar Energy Facility maintenance and property upkeep, such as mowing and trimming, safe access to the installation, as well as general procedures for operational inspections and maintenance of the installation.*

A separate “stand alone” Operations and Maintenance Plan (“O&M Plan”) has been submitted to the Town as part of the application for a special use permit and site plan approval. The O&M Plan is submitted separately for ease of tracking the Solar Law requirements.

The following is a summary of general operation and maintenance activities:

During operation, maintenance activities will focus on the scheduled preventive maintenance and repairs of the solar generating equipment. The maintenance and repair of Project components is expected to be coordinated through monitoring, on-site inspections, and technical support from the various warranty services provided by the equipment manufacturers. Unsafe, inoperable, and/or abandoned equipment, shall be removed by the Project Owner.

The Solar Facility will operate 7 days per week, generating electricity during daylight hours. Preventive maintenance activities will occur during normal working hours, generally twice per year, with the occasional need to conduct corrective maintenance to certain equipment or facilities during non-scheduled or weekend hours.



The solar generating equipment will be continuously monitored and controlled from a central control room during normal working hours with 24-hour monitoring from a remote source. The generation units, auxiliary systems and balance of the Solar Facility will be connected to a Supervisory Control and Data Acquisition system (“SCADA”).

Standard maintenance for the Solar Facility will include:

- **Modules Cleaning:** Module cleaning will be performed during preventive maintenance visits on an as-needed basis following extraordinary snowstorms. Module cleaning does not involve use of chemicals.
- **Scheduled Project Maintenance:** There will be the need to periodically inspect the modules (snow, ice, grass, vegetation) and make necessary alignment adjustments (i.e. tighten fasteners) or replace damaged modules to prevent breakdowns and production losses. Project components will go through maintenance checklist once or twice per year.

The checklist shall include such items as:

- Checking wire connections
  - Testing voltage/current
  - Inspecting components for moisture
  - Confirming settings on the inverter
  - Transformer maintenance
  - Resealing of system components
- **Corrective Maintenance:** Corrective maintenance will occasionally be required due to uncontrollable circumstances such as severe weather or premature failure of components. These unscheduled repairs will be undertaken in a manner to minimize impacts to the continued operation of the **Solar Facility**.
  - **Monitoring Management:** uses real-time data to oversee Project parameters.

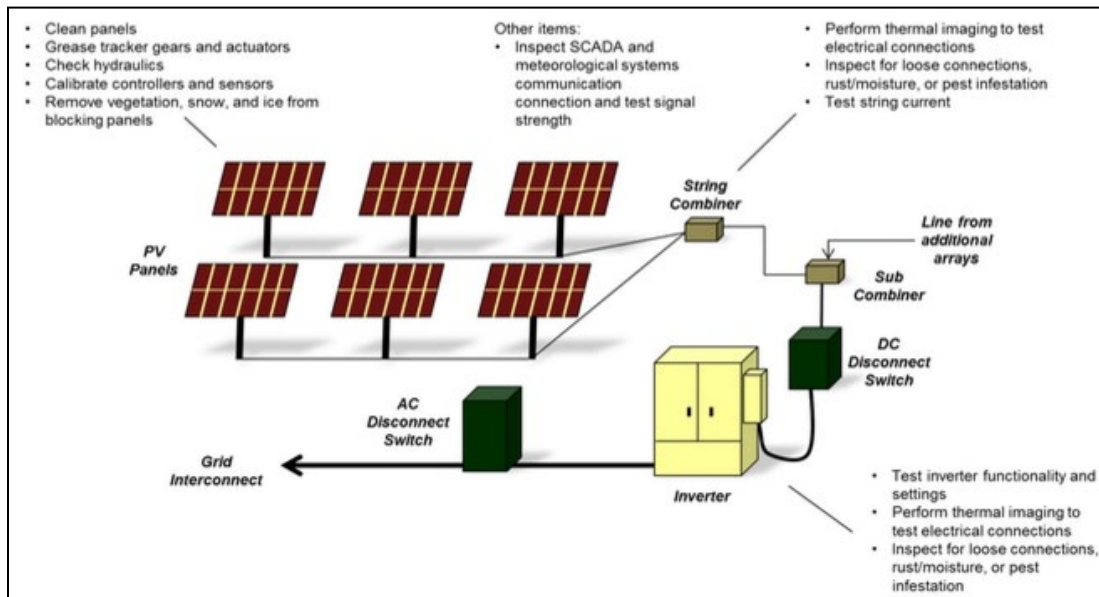


Figure 7. Highlights of the *Solar Facility Maintenance*

Typical equipment required to support operation and maintenance of the Solar Facility includes:

- Cleaning systems
- Standard electrical tools
- Building support systems
- Transport vehicles (pick-up truck, ATV, etc.)
- Standard mechanics tools

Project Site Maintenance: Frequency of site visits shall be determined based on season (more in summer, less in winter), but no less than quarterly to monitor vegetation. Any required corrective actions will be taken as soon as practical or warranted by the circumstances. Typical activities include:

- Visually inspect and report on all fencing for signs of damage, intrusion, and overgrowth of vegetation.
- Inspect signage to ensure all originally installed signs are present and legible.
- Maintenance of access road, including snow removal as needed.
- Vegetation may need to be trimmed or cut back to avoid shading of the solar modules. Shading inspections will be done semi-annually, and trimming will occur as needed. This would include ground cover, existing vegetation, and screening vegetation. Ground cover will be either mowed, as needed, or sheep may be utilized to graze the array area.
- Adherence to any Storm Water Pollution Prevention Plan practices, if any



**2.10. Site Security**

Limiting access to the Project Site to non-authorized personnel is necessary both to ensure the safety of the public and to protect equipment from potential theft and vandalism.

The perimeter of the Solar Facility will be fenced with an approximately eight-foot-high fence to facilitate Project and equipment security (see Figure 8 for proposed fencing type). Surveillance methods such as security cameras or motion detectors may be installed at locations along the Project Site boundary. There is no lighting proposed on the Project Site. Warning signs with the Project Owner’s phone number will appear on signs placed at the entrance and perimeter of the of the Solar Facility.



*Figure 8. Fencing*

**2.11. Temporary Construction**

Temporary construction staging areas are required for temporary construction offices, construction parking, material laydown and storage areas, an equipment assembly area, and portable toilet facilities. These areas will be located on the Project Site and used throughout the Project construction period and then decommissioned. The exact location of the temporary construction staging areas will be defined in the drawings.

Graded all-weather roads may be required in selected locations on the Project Site during construction to bring equipment and materials from the staging areas to the construction work areas. These roads may not be decommissioned after construction and may be utilized for long-term Project operation and maintenance.

**2.12. Water Uses and Sources**

The Project will not use any utility water for electrical power generation.

**2.13. Erosion Control and Storm Water Drainage**

A Storm Water Pollution Prevention Plan (SWPPP) study has been prepared, submitted and reviewed by the Town’s review engineer.

**2.14. Vegetation Treatment and Management**

The Project Site consists of low volume forest land with dense undergrowth. The project site will be cleared for the construction of the project. Native vegetation (low growing grasses) will be planted after construction to grow amongst the solar panels.

**2.15. Waste Materials Management**

The Project will generate a variety of non-hazardous wastes during construction and operation. These waste items may include the materials listed in Table 4:

<b>Table 4: Waste and Hazardous Materials Management</b>	
<b>Item</b>	<b>Description</b>
PVC Cement	Adhesive used for underground PVC conduit and ground sleeve
Cardboard	General packaging
Plastic	General packaging, wiring coating
Cold Galv	Anti-rust galvanizing spray used when cutting material to prevent rust.
Copper & Aluminum	Wiring systems trims

Material Safety Data Sheets (“MSDS”) will be maintained at the Project Site during construction. All waste shall be disposed of according to what is specified in the MSDS.

**2.15.1. Construction Waste Management**

During construction, inert solid wastes may include recyclable items such as paper, cardboard, solid concrete, metals and wire, Type 1 to 4 plastics, drywall, and wood. Non-recyclable items include insulation, other plastics, food waste, packing materials, and other construction wastes. Management of wastes will be the responsibility of the Project Owner. Typical management practices required for contractor waste include recycling, when possible, proper storage of waste and debris to prevent wind periodic transport and disposal of waste by an authorized trash hauler. A waste management plan will be implemented during construction.



It is expected that a 40-cubic-yard container will be staged at the Project Site and emptied (exchanged) on an “as needed” basis. Construction waste is not expected to have an impact on public health. No hazardous wastes are expected.

### **2.15.2. Operations Waste Management**

During operations, inert solid wastes generated would be predominantly routine maintenance wastes, such as scrap metal, wood, and plastic from surplus and deactivated equipment. Scrap materials such as paper, packing materials, glass, metals, and plastics will be segregated for recycling. Non-recyclable inert wastes would be stored in covered trash bins in accordance with local ordinances and picked up by an authorized local trash hauler for transport and disposal.

### **2.16. Fire Protection**

Fire protection at the Project Site will include safety measures to ensure the safeguarding of human life, prevent personnel injury, and preserving property. The Project Owner will offer to meet with the local fire department(s) to provide them with information related to the Project.

### **2.17. Health and Safety**

A “Health and Safety” plan will be in effect during construction with regular inspections. Workers will be required to use personal protective equipment (“PPE”) during construction activities. Required PPE will be approved for use, distinctly marked to facilitate identification, and be used in accordance with the manufacturer’s instructions. The PPE will be of such design, fit, and durability as to provide adequate protection against the hazards for which it is designed. The use of PPE for site activities includes but is not limited to safety glasses or goggles, hardhat, earplugs, dust mask, leather and/or insulated gloves, safety-toe and/or metatarsal shoes, apron, and safety belt.

During construction, a first aid station, complete with all emergency medical supplies, will be located on the Project Site.

## **3.0. CONSTRUCTION OF THE SOLAR FACILITY**

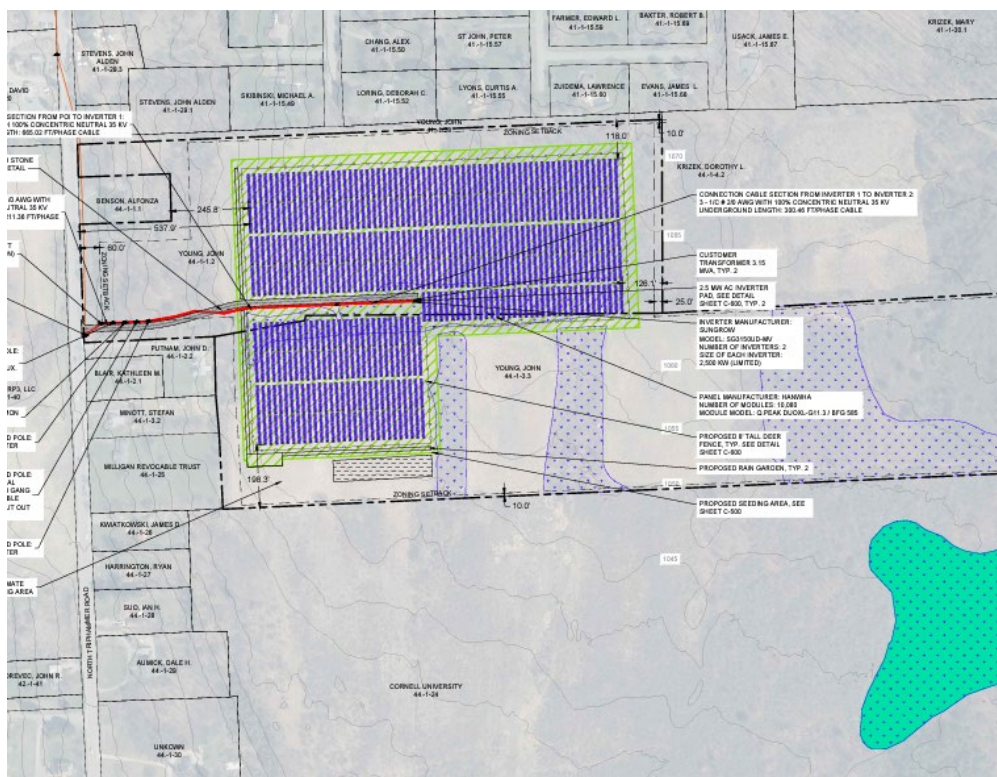
The following section generally describes the activities that are anticipated to occur before and during Project construction and throughout operation and maintenance of the Project.

### 3.1. Solar Field Design, Layout, Installation and Construction Processes

The site plan for the Solar Facility is shown in Figure 9a and Figure 9b. The Solar Facility consists of arrays anchored to the ground. Arrays may be reconfigured as required by site characteristics such as parcel boundaries, roads, topography or similar constraints.

The arrays are installed in a block configuration. Modules are attached to horizontal steel shafts supported by vertical steel posts. All panels will have minimal visual effect and the minimum height in relation to the ground will be approximately 3 ft. All mechanical equipment will be completely enclosed by an approximately 8' high fence.

Figure 9a. Project Site Layout Project #1







<b>Table 5: Typical construction estimated personnel and equipment required</b>		
Item:	# of Personnel	Equipment
Survey	3	2 pickup trucks
Solar Installation	12	1 piling and drilling machine 1 fork lift 2 trucks
Temporary Road Construction	6	1 excavator 1 road grader 2 trucks
Trench and backfill	4	1 excavator 1 compactor 2 trucks
Interconnection Line	4	1 spool truck 1 trencher 1 truck
Clean-up	4	1 truck
Rehabilitation	2	1 truck
Estimated personnel	35	

**3.4. Site Preparation, Surveying and Staking**

A detailed land survey will be performed to establish local benchmarks and Project Site boundaries. A topographic survey will be performed to establish the Project Site’s grading and drainage plans for the arrays, roadways, and other Project features. A lot line improvement may be needed for the projects and will be submitted at a later date. Detailed maps with GPS coordinates will be supplied to proper authorities having jurisdiction as required for permitting.

A licensed survey team, prior to commencement of construction, will properly stake the Project Site physical boundaries and construction footprints. The survey team will additionally stake the path through any right of ways (“ROW”s) for the Interconnection Lines or provide a detailed map using GPS coordinates.

**3.5. Site Preparation and Vegetation Removal**

Vegetation will only be removed in disturbed areas as required for placement of modules, electrical equipment, access road and drainage swales. Vegetation removal will be minimized as much as possible.

The Project Site is expected to require minimal grading. To the extent possible, the racking system will be adapted to the existing topography. Minimal grading may be required for the inverter and transformer pad.

**3.6. Solar Facility Construction**

Prior to installation of the modules, the supporting steel posts would be installed, generally pile driven to minimize ground disturbance. The modules would be mounted by hand to the steel posts and all necessary



electrical, communications, and other connections will be made. All significant assembly and erection will be conducted on site.

**3.7. Project Construction**

The anticipated Construction Schedule may change based on time of year/product availability.

**3.8. Gravel Needs and Sources**

Gravel needs would be moderate. The main access road, if needed, would use compacted, crushed gravel imported from offsite. Materials will be locally sourced to the extent possible.

**3.9. Electrical Construction Activities**

Power generated by the modules will be collected through a power collection system. The collection system will direct the output from the modules to the on-site transformer to be transmitted through the Interconnection Line to the Utility grid.

**3.10. Interconnection Line Construction Sequence**

The Interconnection Line from the Project Site to poles required the Utility will be underground. The construction of the Interconnection Line is a several step process. The initial step will be clearly surveying the ROW boundaries and marking any existing underground utilities. After the ROW has been staked, excavation equipment can be used to dig the trench. The excavated soil will be used for backfilling or disposed of on-site. When the trench is prepared, the conduit installation process can begin, utilizing the proper backfill around the conduit, if required. Above the conduit placement, the previously excavated native soil can be used to fill in the remaining trench depth.

**The Engineering, Procurement and Construction contractor (EPC Contractor) shall provide a compilation of all user manuals, guarantees and warranties to the Project Owner and O&M Contractor including a data sheet for each item of equipment.**

**4.0. ENVIRONMENTAL CONSIDERATIONS**

**4.1. Description of Project Site and Potential Environmental Issues**

**4.1.1. Special or Sensitive Species and Habitats**

General locations where rare animals, rare plants, and significant natural communities (such as forests, wetlands, and other habitat types) are already documented in New York State. The Project Site is not located

within an area designated as having the potential for habitat for rare plants and/or endangered animals via the NYSDEC Environmental Resource Mapper Rare Plants and Animals Overlay Map (“DEC Mapper”). The Project Site does not fall within lands known or expected to be near critical habitat protected under the U.S. Fish and Wildlife Service (“USFWS”).

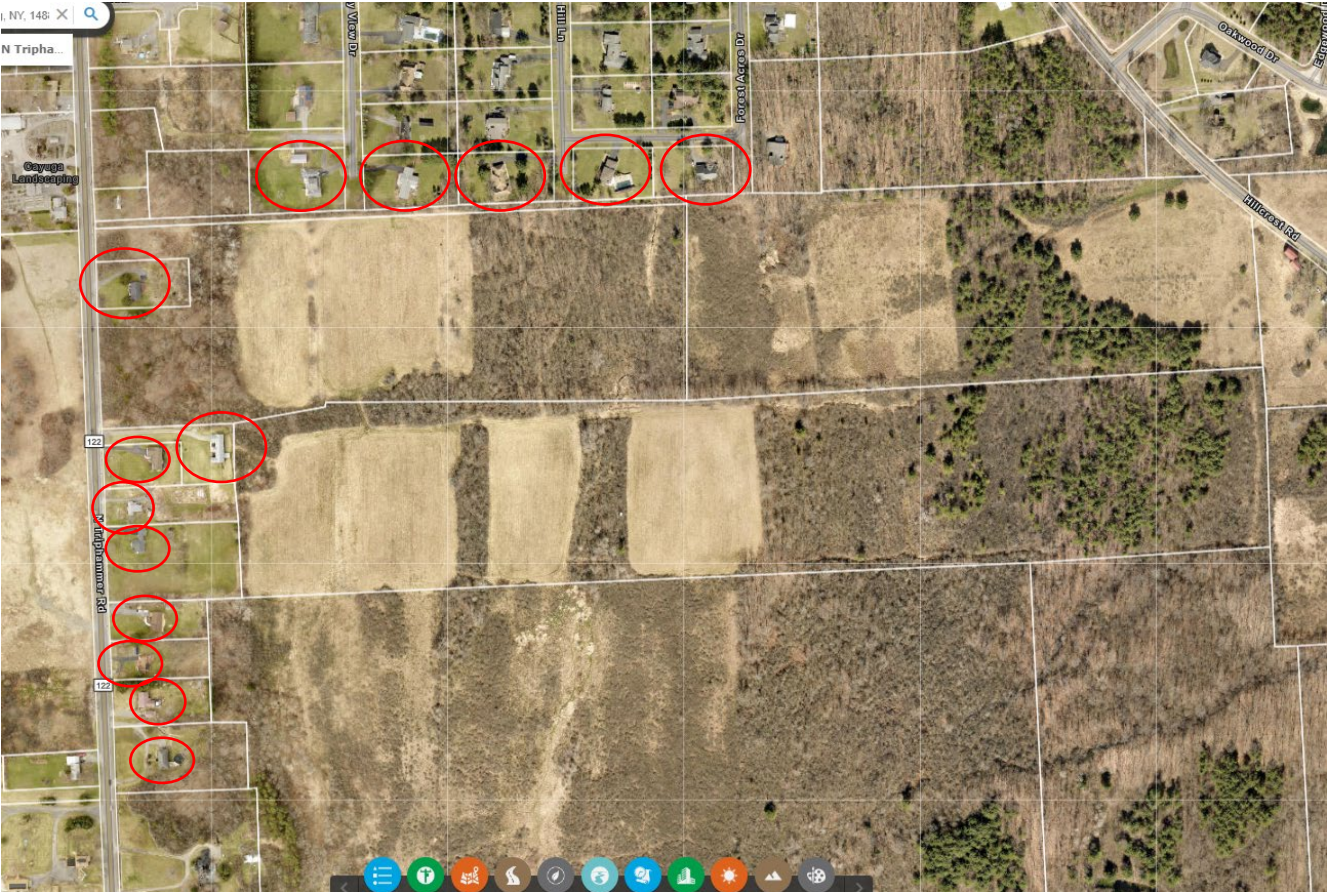
**4.1.2. Visual**

There will be a landscaping plan provided to mitigate the view of the solar field.

The Project Site consists of mostly vacant areas. The Property is bounded as follows:

- North: residential area
- East: heavily wooded areas
- South: heavily wooded areas
- West: densely wooded areas at project #1, as well as residential homes on project #2

See Figure 10 on the following page for the location of nearby residences and structures.





*Figure 10. Nearby Residences / Buildings***4.1.3. Glare and Glint**

Solar panels are designed to not reflect sunlight. In general, solar panels absorb as much sunlight as possible while reflecting as little light as possible. Solar panels produce less glare and reflectance than standard home window glass. Solar panels use “high-transmission, low-iron” glass, which absorbs more light, producing smaller amounts of glare and reflectance than window glass. Research has shown that they reflect less light than snow, white concrete, and energy-efficient white rooftops.

Glint is typically defined as a momentary flash of bright light, often caused by a reflection off a moving source. A typical example of glint is a momentary solar reflection from a moving car, or “catching” something bright out of the corner of your eye.

Glare is defined as a continuous source of bright light. Glare is generally associated with stationary objects, which, due to the slow relative movement of the sun, reflect sunlight for a longer duration. The difference between glint and glare is duration. Industry-standard glare analysis tools evaluate the occurrence of glare on a minute-by-minute basis; accordingly, they generally refer to solar hazards as “glare”.

The ocular impact of solar glare is quantified into three categories (Ho, 2011):

1. Green – Unproblematic shine. Low potential to cause after-image. This type of glare can be compared to noticing something shiny in the distance.
2. Yellow - Potential to cause temporary afterimage (flash blindness). This type of glare is much like sunrise and sunset glare for drivers who struggle to find the perfect angle for car visors so they can continue to operate their vehicle safely while traveling through areas of such glare.
  - a. Standard levels of yellow glare can, for the most part, be handled with relative ease utilizing slatted fencing or local foliage landscape mitigation measures.
  - b. Only extremely high levels of this type of glare (in the area of the chart labeled as “direct viewing of the sun” which is uncommon to find with PV installations) would be considered an insurmountable hurdle to a PV installation of any size.
  - c. High levels/intensities and long durations are different factors.
3. Red - Potential to cause retinal burn (permanent eye damage). PV modules do not focus reflected sunlight and therefore retinal burn (RED glare) is typically not possible.
  - d. This is the ONLY type of glare that would be considered an insurmountable hurdle to a PV installation of any size.

These categories assume a typical blink response in the observer.

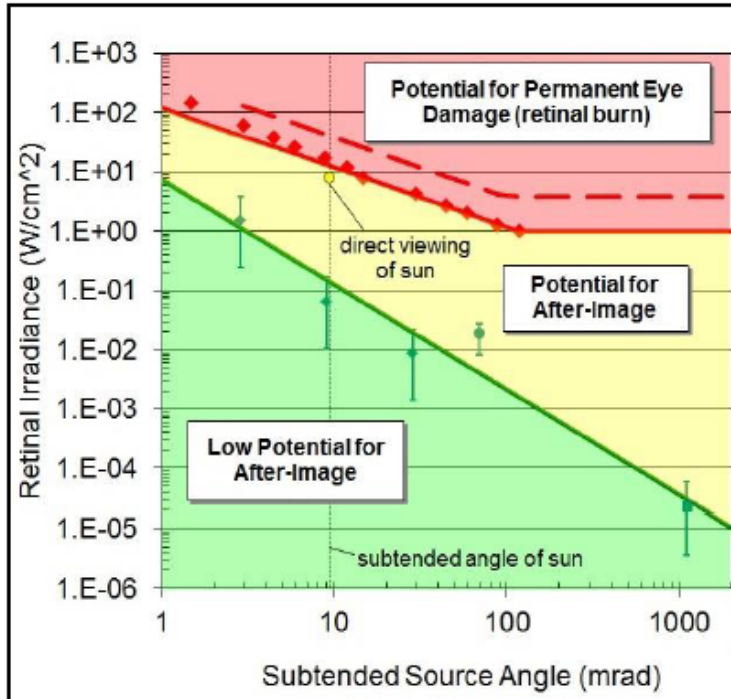


Figure 1 – From *ForgeSolar* website (sample glare hazard plot defining ocular impact as function of retinal irradiance and subtended source angle (*Ho, 2011*))

To further put glare into perspective, the following is presented.

YELLOW glare such as in the graphic below could only be seen when standing directly next to project panels at the perfect angle when the sun is in a perfect place—indeed the point of a photographer standing directly by these panels and waiting for the perfect moment to capture this image. It is also possible that the panels in the picture shown do not have an anti-reflective coating.





*Solar panel showing solar glare*

GREEN glare, as illustrated below, is the more common occurrence with solar projects—a noticeable shiny area (in the northwest area) as compared to panels where the sun is not quite in perfect alignment yet.



The effect of this noticeable shine to certain areas of the project area is still seen from a relatively close up vantage point and at the optimal height this image was captured, possibly by a drone. A similarly sized project in the distance, closer to the horizon of the photo would be unlikely to show even the levels of green glare that the system in the foreground reflects.

US patent # 6359212 (method for testing solar cell assemblies and second surface mirrors by ultraviolet reflectometry for susceptibility to ultraviolet degradation) explains the differences in the refraction and reflection of solar panel glass versus standard window glass.

When a ray of light falls on a piece of glass, some of the light is reflected from the glass surface, some of the light passes through the glass (transmitted), and some (very little) is absorbed by the glass. Following are parameters to consider when considering glare from solar panels:

- The measure of the proportion of light reflected from surface is called reflectance (reflection): R
- The measure of the proportion transmitted is the transmittance (this is where the term high light transmission glass comes from because the glass is formulated to allow more sunlight to pass through its surface than would pass through a standard glass surface): T
- The measure of the proportion absorbed is absorptance (absorption) (this amount is very small for clear glass, much smaller proportionately, than the other two components): A

Each quantity is expressed as a fraction of the total intensity (quantity) of a ray of light. Intensity may be expressed as follows:  $R + A + T = 1$ .

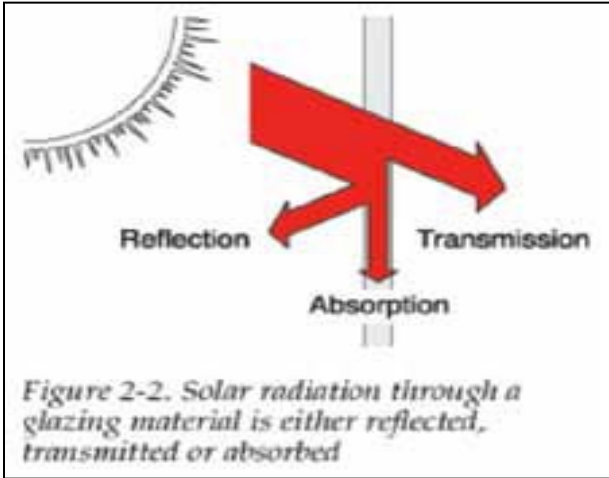


Table 6. Solar Radiation through Glazing Material

The reflection/refraction behavior of a medium is directly related to its index of refraction. Lower the index of refraction is suitable because the medium is allowing more of the incident ray to pass directly through.

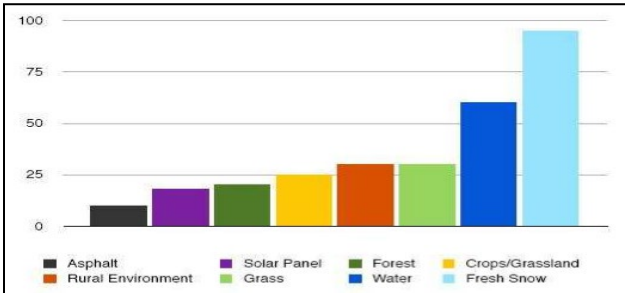




Table 7. Common Reflective Surfaces

It should be noted from the graph and the table above, that the reflected energy, in percentage, of solar glass is much lower than water and even below that of forest reflection.

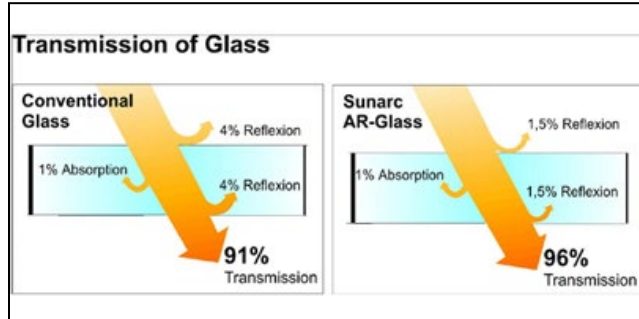


Table 8. Anti-Reflective Coating reflect a lower percentage of light than smooth water.

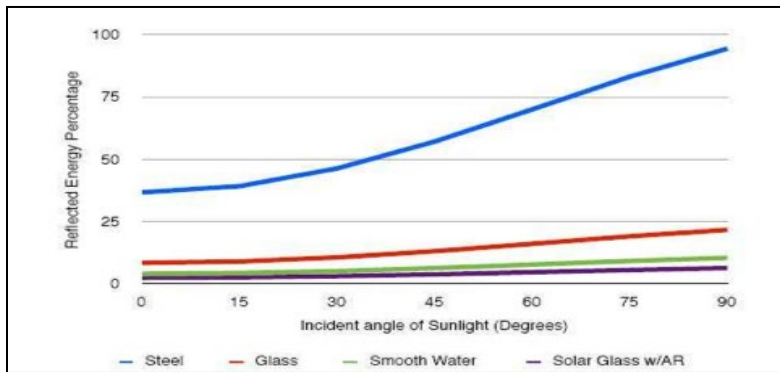


Table 9. Analysis of typical Material Reflectivity with sunlight angle (from normal).

Steel, a common building material, reflects far more incident sunlight than a solar panel.

The percentage of the incoming sunlight that is reflected is very low for high sun angles (most of the day) and increases for a very low sun angles (near sunrise and sunset when the intensity of the sun is already substantially lower than at mid-day.).

Taking into account existing vegetation and distance from the road as well as the aforementioned information regarding glare off the solar modules, roadways, buildings and flights paths will not be impacted by glare from the panels.

#### 4.1.4. Storm Water Drainage

##### 4.1.4.1 Storm Water Drainage off Modules

The storm water impacts of a solar installation will depend upon the project design, site conditions and characteristics, as well as topographic conditions. A SWPPP determines the impact, if any, of the existing runoff conditions and remediation actions, if needed, for the proposed runoff conditions. The Solar Facility

is a fixed structure mounted and is installed with minimal impact to the current topography and groundcover conditions. Also, the Solar Facility is arranged with sufficient distance between the modules to allow rainfall to infiltrate between each module and flow between arrays, allowing any runoff to naturally infiltrate and drain over all ground surfaces.

The conceptual design of the Project has been arranged, to the maximum extent practicable, to mimic natural hydrology. Rainwater falling on the modules will not channel or accumulate in large volumes as it will runoff the modules using the gap between each module, about 1 inch. Rainwater will fall off each module within a few feet of where it would naturally fall. Additionally, the site has full grass ground cover, minimizing erosive actions.



Figure 11. Module Spacing Gaps

Elements of the Solar Facility that alter natural infiltration, such as steel poles driven into the ground and any other racking components are treated as impervious. Other impervious elements would include concrete pads or foundations for racks or inverter cabinets.

The following factors have been considered during the design process:

- Runoff to flow onto and across vegetated areas to maintain the disconnection
- Disconnecting impervious surfaces works best in undisturbed soils.
- Minimizing ground disturbance.

The rows of solar panels will be installed according to Figure 12 below. In this scenario, the disconnection length is the same as the distance between rows and is at least 80% of the width of each row. Therefore, each row of modules is adequately disconnected between modules and between rows.

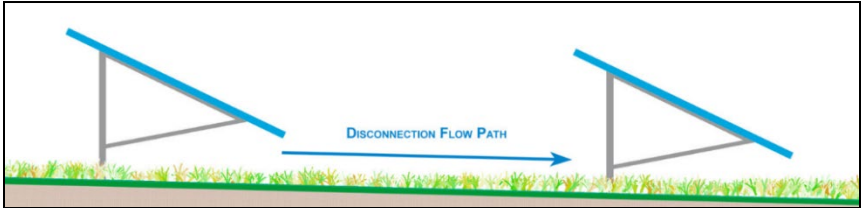


Figure 12. Array Spacing - disconnection flow path between arrays



#### 4.1.4.2 Vegetation under Modules

The modules will reduce direct sunlight under each module in direct proportion to its total collection area; this may reduce plant coverage and density under the modules. In contrast, this shading will increase the moisture of the ground providing an extra water source for vegetation.

There will be shading underneath each module (varies based on sun position and type of array layout). Within this area there will be reduced sunlight intensity. Sunlight intensity is reduced but still enough intensity remains to allow grass to persist under the shaded area. The growing pattern will be slower than the conditions associated with full open environments but good enough to allow grass to endure. Generally, the measurements made in the various light regimes indicate native grasses grows best when light values exceed 600 Lx but the growing patterns will be reduced to a level where the grass will have a thinner cover and resulting a slower growing path for the grass. Other contiguous grasses may actually benefit from some shading providing a slightly moister substrate that could be utilized by the grasses. (Source: proposed solar panels vegetation impacts, prepared by Joseph Arsenault, July 2010)

#### 4.1.5. Noise

Very minimal low-level noise is generated from the electrical inverter and distribution transformer. Inverters are tested and do not generate disturbing noise levels, and noise from equipment will not be audible at the Property boundary. Central inverters are usually surrounded by the solar panel arrays whose electricity they manage—further distancing them from anyone who might happen to be nearby. At a distance of 1m, central inverters have a sound pressure level of less than 70dB. Furthermore, because solar modules produce power only when the sun is shining, inverters will be completely silent at night.

**If trackers are proposed for the Solar Facility, the tracking racking will move slowly following the sun. This tracker movement is slow and will not create any perceptible noise.**

#### 4.1.6. Dust and Waste

The inclination of the modules allows water to flow freely through them and clean the surface when it is raining. No dust will be generated during operations. Modules after use (20 or 30 years) are 95% recyclable. The equipment will be designed for a 30-year lifespan, and end-of-life site remediation and equipment replacement options will be discussed in the Decommissioning Plan.

#### **4.1.7. Safety**

A health and safety plan will be implemented during construction. All equipment installed will comply with safety rules. Warning signs (visible, in good condition and permanent) will be posted. Perimeter fencing and surveillance system will be considered. All the equipment will be tested and in warranty. Equipment must comply with Federal, State and local regulations and applicable laws.

The electrical safety for workers will be designed and evaluated in detail. The hot parts will be isolated, and general equipment or switching devices will be mechanically interlocked. The electrical installations are equipped with protection against abnormal operating conditions, providing compliance with safety rules.

#### **4.1.8. Impacts During Construction**

It is expected that some noise will be generated during construction activities. All actions involving risk will be considered: civil engineering, machinery, transportation, etc. Impacts due to construction will be investigated, and mitigation measures will be proposed. The contingency provision for the Solar Facility consists of a detailed analysis of the possible occurrence of an incident while under construction; the purpose is to have a response to maintain the safety of people, environment, and Property.

#### **4.1.9. Cultural and Historic Resource Sites and Values**

The historic and archeological map will be utilized to identify if any cultural or historical significance exist on site. Any cultural resource that would be directly or indirectly impacted, if any, would be subject to further evaluation.

#### **4.1.10 Solar Facilities Classified as Non-Hazardous Materials**

Photovoltaic panels are designed to last more than 30 years, and many manufacturers back their products with performance guarantees backed by warranties. Many Solar Energy Industry Association (“SEIA”) members already operate take-back and recycling programs for their products. They are committed to guiding both state and federal regulations that support safe and effective collection and recycling of end-of-life modules.

End-of-life disposal of solar products in the US is governed by the Federal Resource Conservation and Recovery Act (“RCRA”) (<http://www.epa.gov/lawsregs/laws/rcra.html>), and state policies that govern waste. To be governed by RCRA, panels must be classified as hazardous waste.



To be classified as hazardous, panels must fail the Toxicity Characteristics Leach Procedure test (“TCLP Test”). Most panels pass the TCLP test, and thus are classified as nonhazardous and are not regulated. Numerous companies make available to its customers modules that do not contain toxic heavy metals (no more lead or cadmium than allowed under RoHS).

Because panel materials are enclosed, and don’t mix with water or vaporize into the air, there is little, if any, risk of chemical releases to the environment during normal use. The most common type of panel is made of tempered glass, which is quite strong. They pass hail tests.

All solar panel materials are contained in a solid matrix, insoluble and non-volatile at ambient conditions, and enclosed. Therefore, releases to the ground from leaching to the air from volatilization during use, or from panel breakage, are not a concern. Ground-mounted arrays are typically made up of panels of silicon solar cells covered by a thin layer of protective glass, which is attached to an inert solid underlying substance (or “substrate”).

The main component of most modules is silicon, which isn't intrinsically harmful, but parts of the manufacturing process do involve hazardous chemicals and these need to be carefully controlled and regulated to prevent environmental damage. It is important to note that the same materials are in other electronic goods such as computers and TVs.

Generally, companies participate in a fully funded collection and recycling system for end-of-life modules produced globally; have written a letter to SEIA urging it to support Extended Producer Responsibility (“EPR”) laws and regulations; support public EPR policies in the regions where the company manufactures and sells modules and takes responsibility for recycling by including the “crossed out garbage bin” symbol on module name plates, including a PV Cycle link on the company website; and clearly describe on the website how customers can responsibly return modules for recycling.

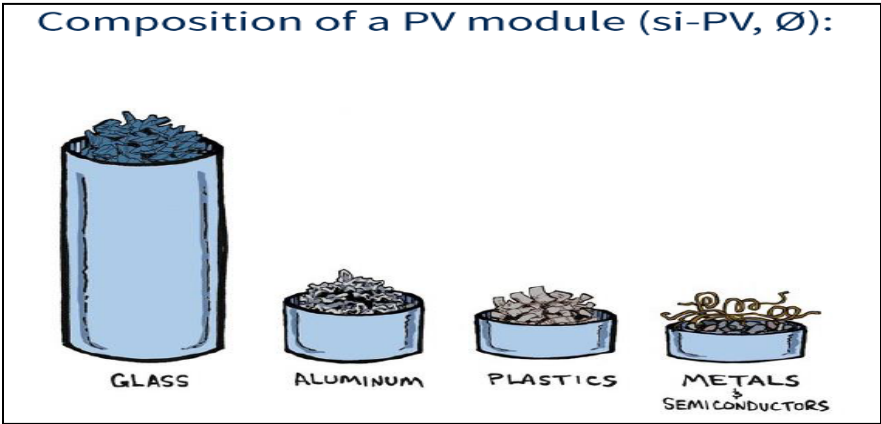


Figure 13. PV Module Composition - Source: PV Cycle

Transformers used at solar installations are similar to the ones used throughout the electricity distribution system in cities and towns. Modern transformers typically use non-toxic coolants, such as mineral oils. Potential releases from transformers using these coolants at solar installations are not expected to present a risk to human health. Release of any toxic materials from solid state inverters is also unlikely provided appropriate electrical and installation requirements are followed.

#### 4.1.11 Decommissioning Plan

The decommissioning requirement for a Solar Facility set forth in §802.18.14 of the Solar Law read as follows:

##### **Local Law #3 of 2020 Section 802.18.14**

*Abandonment and Decommissioning. A Decommissioning Plan shall be submitted with each Application in accordance with § 802.21 of this Chapter. Approval of the Decommissioning Plan by the Town Planning Board shall be required, including under Site Plan review. Removal of Solar Energy Facilities must be completed in accordance with the Decommissioning Plan. If the Solar Energy Facility is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and impose a lien on the property to cover these costs to the municipality.*

##### **Local Law #3 of 202 Section 802.21.1**

*A Decommissioning Plan shall, at a minimum, contain the following elements and meet the following requirements.*

- i. Specify when and what constitutes an event requiring decommissioning, including abandonment of the facility. In all cases the lack of production for 6 months (or for 12 of any 18 months) and the violation of any site plan conditions, the lack of a current permit or violation of permit conditions, including but not limited to maintenance of any required decommissioning bond or security, shall be an event requiring decommissioning.*
- ii. Specify the form and type of notice required to the Town in the event of any decommissioning, sale, transfer, partial transfer, assignment, or occurrence of any event which may result in an act or partial order requiring partial or complete decommissioning of the site.*
- iii. The means and methods by which utility interconnections will be removed and permitted by the utility provider, as well as all electrical and other safety precautions undertaken during removal.*
- iv. All decommissioning and restoration activities shall be completed within 150 days of the date decommissioning was ordered or required, including under the plan.*
- v. Demonstrate the removal of all Solar Panels, Battery Energy Storage Systems, wind turbines, electrical appurtenances, Towers, structures, equipment, security barriers and transmission lines.*
- vi. Demonstrate the minimization of disruption to field drains and soils, and the*



*remediation of drains and soils, including stabilization and revegetation of any sites or disturbances, including as minimize erosion. Decompaction of soils to 18 inches and removal of any installed materials to 4 feet is required. The Planning Board may allow the owner or operator to leave landscaping or designated belowgrade foundations in place to minimize erosion and disruption to vegetation in a proper case, but generally all of the New York Department of Agriculture and Markets' Guidelines for Agricultural Mitigation for Wind Power Projects or Solar Energy Projects, as applicable, shall be adhered to in any plan.*

*vii. Specify disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations, including the removal of any damaged or contaminated soils. No designation of any facilities by a 'beneficial use declaration' shall be permitted to vary this clean-up and remediation/ disposal rule.*

*viii. Include an expected timeline for execution, together with a cost estimate detailing the projected cost of executing the Decommissioning Plan, duly prepared and sealed by a Professional Engineer. Cost estimations must take inflation into account over the expected life of project, and have a mechanism to ensure the periodic updating and securitization of decommissioning costs."*

A separate "stand alone" Decommissioning Plan has been submitted to the Town as part of the application for a special use permit and site plan approval. The Decommissioning Plan is submitted separately for ease of tracking the Solar Law requirements.

The following is a summary of general Decommissioning Plan activities:

Decommissioning of the Solar Facility will include the disconnection of the Solar Facility from the Utility electrical grid and the removal of all Solar Facility components, including:

- Photovoltaic (PV) modules, module racking and supports.
- Inverter units, substation, transformers, and other electrical equipment.
- Wiring cables, perimeter fence.
- Inverter pad concrete foundations.

Generally, decommissioning of a Solar Facility proceeds in the reverse order of the installation.

1. The Solar Facility shall be disconnected from the Utility power grid.
2. PV modules shall be disconnected, collected, and disposed of at an approved solar module recycler or reused / resold on the market.
3. All aboveground and underground electrical interconnection and distribution cables shall be removed and disposed off-site at an approved facility.
4. Galvanized steel PV module support and racking system support posts shall be removed and disposed off-site at an approved facility.
5. Electrical and electronic devices, including transformers and inverters shall be removed and disposed off-site by at approved facility.
6. Concrete foundations shall be removed and disposed off-site at an approved facility.
7. Fencing shall be removed and will be disposed off-site by at an approved facility.

Site decommissioning and equipment removal can take a month or more. Therefore, access roads, fencing, electrical power, and other facilities will temporarily remain in place for use by the decommissioning workers until no longer needed. Demolition debris will be placed in a temporary onsite storage area pending final transportation and disposal and/or recycling according to procedures. No hazardous materials or waste will be used during operation of the Solar Facility; disposal of hazardous materials or waste will not be required at decommissioning.

The piling for support structures is without concrete foundation, so removing piles will not be onerous. The diameter of the holes in the ground are small in terms of impacted area and will be refilled accordingly. Excavations will be backfilled and restored with native onsite material. No significant grading or rework of the site will be performed.

Most materials of the Solar Facility have value: steel, copper, aluminum, and others. The quantity and value of recycled and reusable materials could vary according to markets value, facility conditions and lifespan.

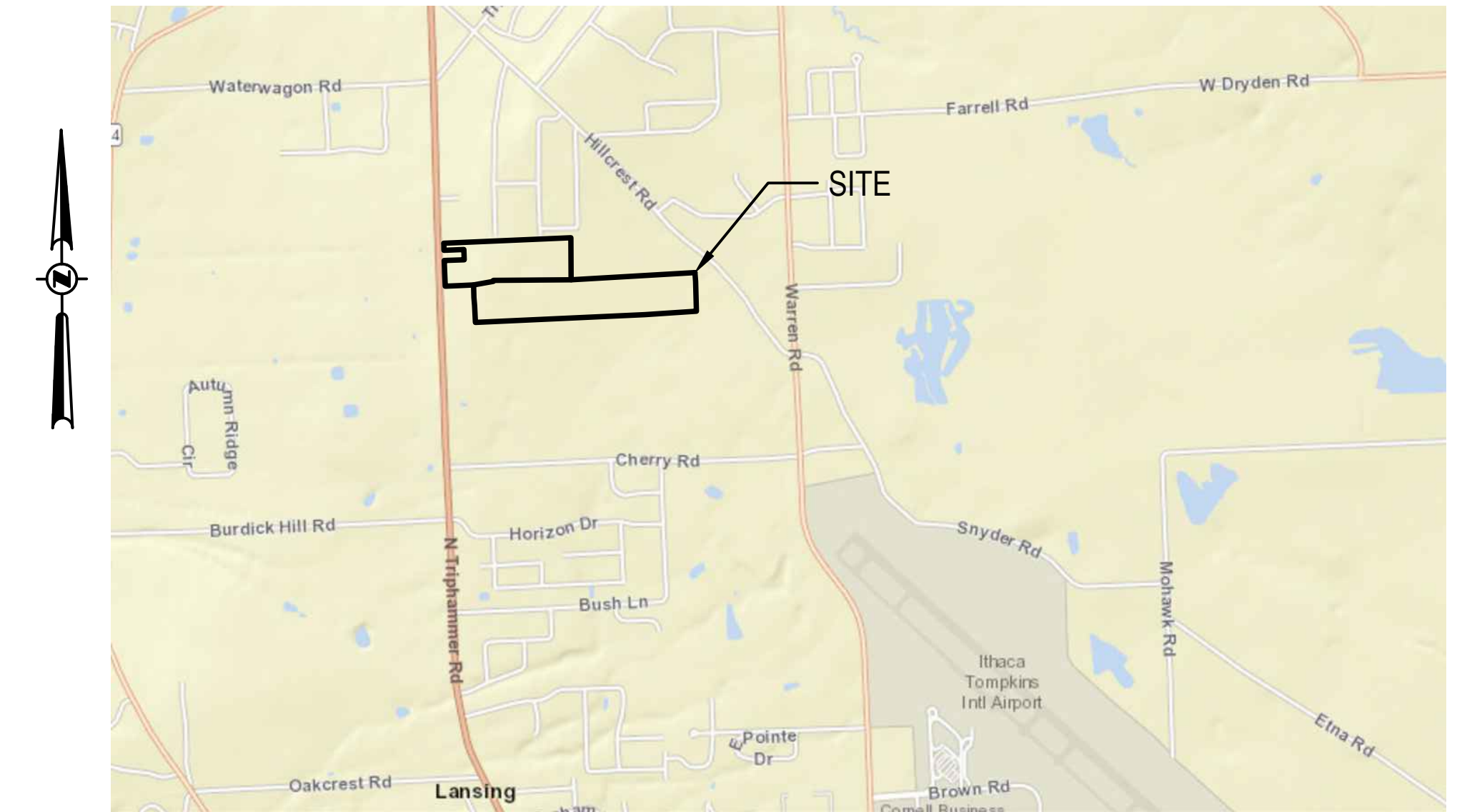
#### **4.1.12. Other Environmental Considerations**

Visual resources in the Project area have been affected by past and present actions, including the construction of highways and roads, Utility lines, sewerage, water utility lines, and limited commercial and residential development, but the existing vegetation allows direct view of the solar project from nearby buildings and highways to be avoided.



# NY LANSING II, LLC

## NORTH TRIPHAMMER ROAD SOLAR PROJECT 3.0 MW AC LANSING, NEW YORK



SOURCE: NEW YORK STATE GIS RESOURCES

VICINITY MAP  
SCALE: 1"=2000'  
0 2000 4000  
SCALE: 1" = 2000'

### PLANS

ISSUED FOR: CLIENT REVIEW  
ISSUE DATE: 04/05/2024  
LAST REVISED: 04/05/2024

### PROJECT CONTACTS

ENGINEER:  
P.W. GROSSER CONSULTING, INC.  
630 JOHNSON AVENUE, SUITE 7, BOHEMIA, NY 11716  
TEL: (631) 589-6353  
FAX: (631) 589-8705

### MUNICIPAL CONTACTS

TOWN:  
TOWN OF LANSING  
26 AUBURN ROAD  
LANSING, NY 14882  
TEL (607) 533-4142

COUNTY:  
TOMPKINS COUNTY  
320 N TIOGA STREET  
ITHACA, NY 14850  
TEL (607) 274-5431

### SITE INFORMATION

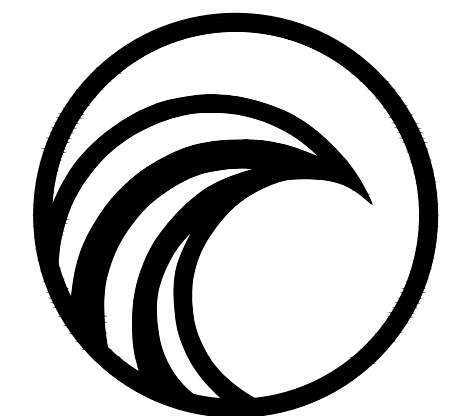
SITE: NORTH TRIPHAMMER ROAD, LANSING NY, 14882  
TM #: 44-1-1.2 & 44-1-3.3  
LOT AREA: 66.83 AC

### SHEET INDEX

NO.	SHEET	TITLE
1.	COVER	
2.	C-001	GENERAL NOTES AND LEGEND INFORMATION
3.	C-100	EXISTING CONDITIONS PLAN
4.	C-101	CONCEPTUAL SITE LAYOUT PLAN
5.	C-200	CONCEPTUAL GRADING AND DRAINAGE PLAN
6.	C-201	CONCEPTUAL EROSION AND SED. CONTROL PLAN
7.	C-500	CONCEPTUAL LANDSCAPING PLAN
8.	C-501	PRIME SOILS IMPACT MAP
9.	C-600	SITE DETAILS
10.	C-601	EROSION AND SED. CONTROL DETAILS
11.	C-602	ELECTRICAL THREE LINE DIAGRAM

### CLIENT INFORMATION

CLIENT:  
NY LANSING II, LLC  
P.O. BOX 384  
CALLICOON, NY 12783



# PWGC

CLIENT DRIVEN SOLUTIONS

P.W. GROSSER CONSULTING, INC.

630 Johnson Avenue • Suite 7  
Bohemia • NY • 11716-2618  
Phone: (631) 589-6353 • Fax: (631) 589-8705  
E-mail: INFO@PWGROSSER.COM

COVER  
SHEET 1 OF 11

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Bohemia - NY - 11716-2618  
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1	CLIENT REVIEW	04/05/2024
Number	Revision Description	Revision Date
Designed By		Date Submitted
Drawn By	HLW	Date Created 03/28/2024
Approved By	MTS	Scale 1" = 150'

Client:  
**NY LANSING II, LLC**  
 P.O. BOX 384  
 CALLICOON, NY 12783

Project:  
**NORTH TRIPHAMMER ROAD  
 SOLAR FARM CONCEPTUAL  
 SITE PLAN**

Project Address:  
**NORTH TRIPHAMMER ROAD  
 TOWN OF LANSING  
 TOMPKINS COUNTY, NEW YORK**

County Tax Map Number: 44-1-1.2 & 44-1-3.3  
 Regulatory Reference Number: ...

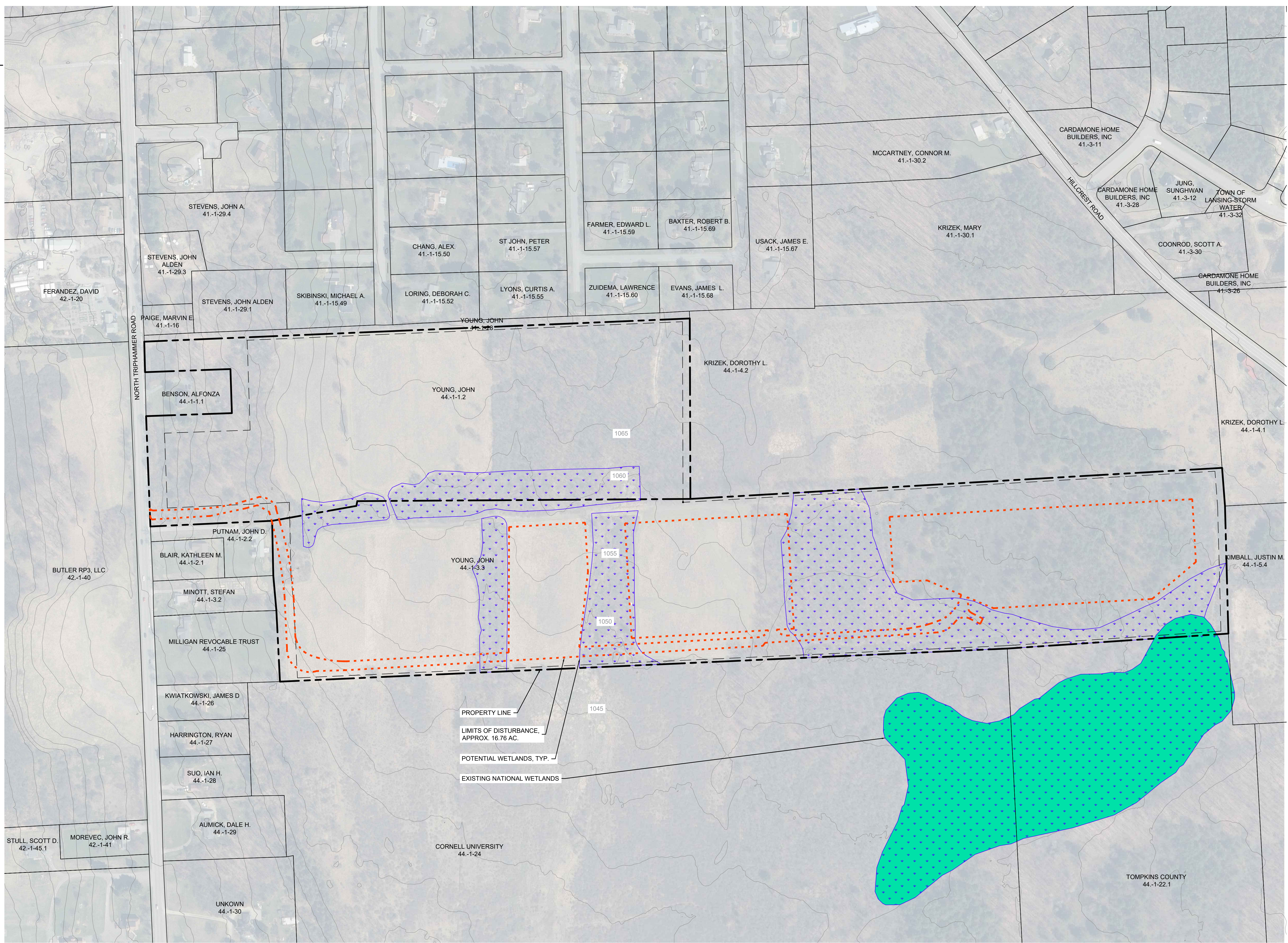
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EXISTING  
CONDITIONS  
PLAN

Drawing Number:  
**C-100**

Sheet 3 of 11  
 PWGC Project Number:  
**DRS2404**

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is a violation of Section 7209  
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Phone: (631) 589-6353 - Fax: (631) 589-8705  
E-mail: INFO@PWGROSSER.COM

**CONSULTANTS**

**SYSTEM SUMMARY**

**MODULE:**

MANUFACTURER: HANWHA  
MODEL: Q.PEAK DUO XL-G11.3 / BFG  
MODULE OUTPUT POWER: 585 WP  
STRING SIZE: 24  
NUMBER OF STRINGS: 252  
MODULE QUANTITY: 6,048  
PV SYSTEM OUTPUT: 3,538.08 KWP DC

**COMBINER BOX:**

CB QTY/INPUTS (QTY/INP): 11 CBs (6 INPUTS)  
12 CBs (5 INPUTS)

**INVERTER:**

MANUFACTURER: SUNGROW  
MODEL: SG3150 UD-MV  
QUANTITY/RATING: 1 / 3,000 KW (LIMITED)  
PV SYSTEM OUTPUT: 3,000 KW AC  
DC SYSTEM VOLTAGE: 1,500 V

**MV INTERCONNECTION:**

TRANSFORMER QTY/RATING: 2 / 3,425 KW  
INTERCON. VOLTAGE: 34.5 KV

**RACKING:**

MANUFACTURER: TBD  
CONFIGURATION: SAT - 1 MODULE PORTRAIT  
TILT: ±55°  
AZIMUTH: 177°

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1	CLIENT REVIEW	04/05/2024
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Project:  
**NORTH TRIPHAMMER ROAD  
SOLAR FARM CONCEPTUAL  
SITE PLAN**

Project Address:  
**NORTH TRIPHAMMER ROAD  
TOWN OF LANSING  
TOMPKINS COUNTY, NEW YORK**

County Tax Map Number: 44-1-1.2 & 44-1-3.3  
Regulatory Reference Number: ---

File of Drawing: ---

**CONCEPTUAL  
SITE LAYOUT  
PLAN**

Drawing Number: ---

**C-101**

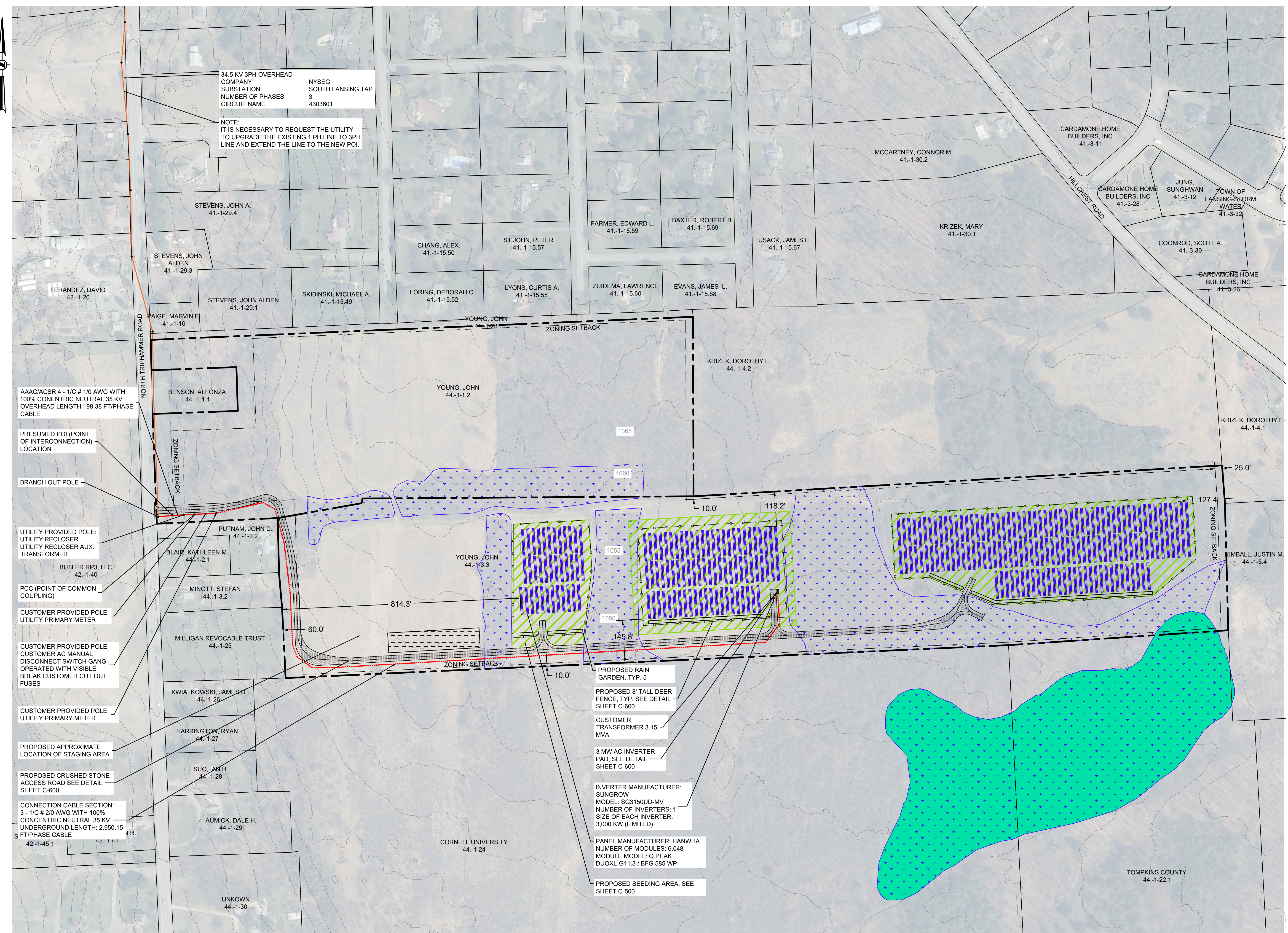
Sheet 4 of 11

PWGC Project Number: ---

**DRS2404**

STATE OF NEW YORK  
MICHAEL SCANDY  
103321  
LICENSED PROFESSIONAL ENGINEER

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TOWN OF LANSING  
TOMPKINS COUNTY, NEW YORK  
County Tax Map Number: 44-1-1.2 & 44-1-3.3  
Regulatory Reference Number: ...

**CONCEPTUAL  
GRADING AND  
DRAINAGE PLAN**



Drawing Number:  
**C-200**

Sheet 5 of 11  
PWGC Project Number:

DRS2404



DATE PLOTTED: April 2024 10:08 AM By: mscann





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CONSULTANTS

NY LANSING II, LLC  
P.O. BOX 384  
CALLICOON, NY 12783

PROJECT: NORTH TRIPHAMMER ROAD SOLAR FARM CONCEPTUAL SITE PLAN

PROJECT ADDRESS: NORTH TRIPHAMMER ROAD TOWN OF LANSING TOMPKINS COUNTY, NEW YORK

COUNTY TAX MAP NUMBER: 44-1-1.2 & 44-1-3.3

REGULATORY REFERENCE NUMBER: \*\*\*

TITLE OF DRAWING: CONCEPTUAL EROSION AND SEDIMENT CONTROL PLAN

DRAWING NUMBER: C-201

SHEET 6 OF 11

PROJECT NUMBER: DRS2404

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DATE: 03/28/24

SCALE: 1" = 150'

DESIGNED BY: HLW

DATE SUBMITTED: 04/05/2024

APPROVED BY: MTS

DATE CREATED: 03/28/24

CLIENT REVIEW

REVISION DESCRIPTION

REVISION DATE

1 CLIENT REVIEW 04/05/2024

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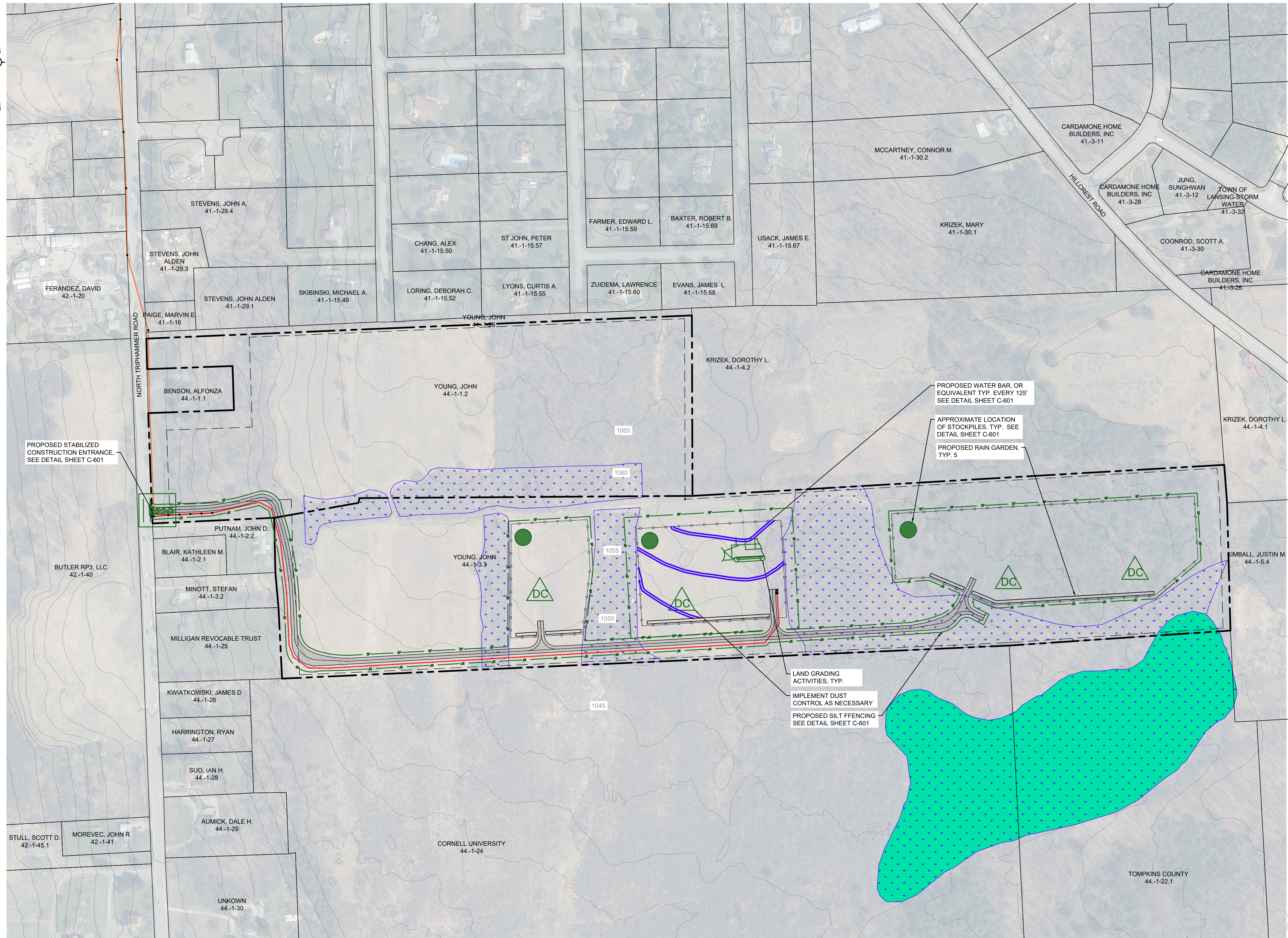
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PROPOSED STABILIZED CONSTRUCTION ENTRANCE SEE DETAIL SHEET C-601

PROPOSED WATER BAR, OR EQUIVALENT TYP. EVERY 125' SEE DETAIL SHEET C-601

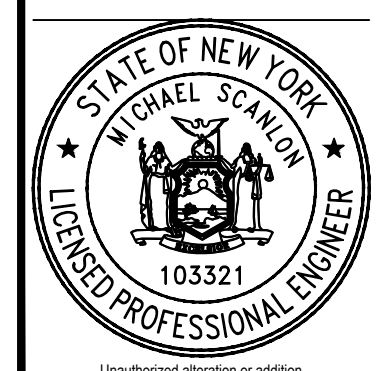
APPROXIMATE LOCATION OF STOCKPILES. TYP. SEE DETAIL SHEET C-601

PROPOSED RAIN GARDEN, TYP. 5

LAND GRADING ACTIVITIES, TYP.

IMPLEMENT DUST CONTROL AS NECESSARY

PROPOSED SILT FENCING SEE DETAIL SHEET C-601



C-201

6 of 11

DRS2404

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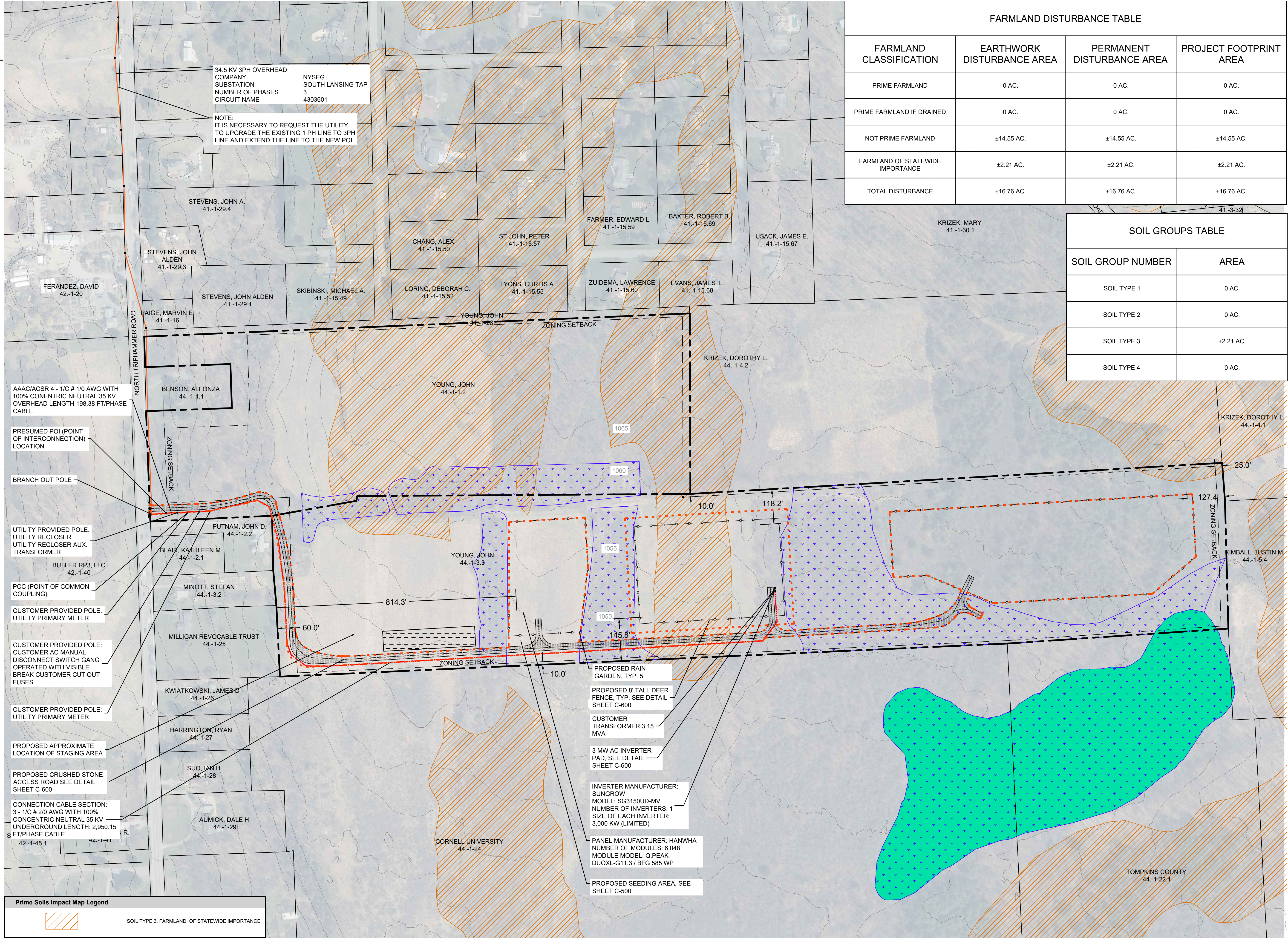


630 Johnson Avenue - Suite 7  
 Bohemia - NY - 11716-2618  
 Phone: (631) 589-6353 - Fax: (631) 589-8705  
 E-mail: INFO@PWGROSSER.COM

**CONSULTANTS**

FARMLAND DISTURBANCE TABLE			
FARMLAND CLASSIFICATION	EARTHWORK DISTURBANCE AREA	PERMANENT DISTURBANCE AREA	PROJECT FOOTPRINT AREA
PRIME FARMLAND	0 AC.	0 AC.	0 AC.
PRIME FARMLAND IF DRAINED	0 AC.	0 AC.	0 AC.
NOT PRIME FARMLAND	±14.55 AC.	±14.55 AC.	±14.55 AC.
FARMLAND OF STATEWIDE IMPORTANCE	±2.21 AC.	±2.21 AC.	±2.21 AC.
<b>TOTAL DISTURBANCE</b>	<b>±16.76 AC.</b>	<b>±16.76 AC.</b>	<b>±16.76 AC.</b>

SOIL GROUPS TABLE	
SOIL GROUP NUMBER	AREA
SOIL TYPE 1	0 AC.
SOIL TYPE 2	0 AC.
SOIL TYPE 3	±2.21 AC.
SOIL TYPE 4	0 AC.



7		
6		
5		
4		
3		
2		
1	CLIENT REVIEW	04/05/2024
Number	Revision Description	Revision Date
Designed By		Date Submitted
Drawn By	HLW	Date Created 03/28/24
Approved By	MTS	Scale 1" = 150'

**NY LANSING II, LLC**  
 P.O. BOX 384  
 CALLICOON, NY 12783

**Project:**  
**NORTH TRIPHAMMER ROAD SOLAR FARM CONCEPTUAL SITE PLAN**

**Project Address:**  
 NORTH TRIPHAMMER ROAD  
 TOWN OF LANSING  
 TOMPKINS COUNTY, NEW YORK

County Tax Map Number: 44-1-1.2 & 44-1-3.3  
 Regulatory Reference Number: ...

**PRIME SOILS IMPACT MAP**

State of New York Professional Engineer Seal for Michael Scanlon, License No. 103321.

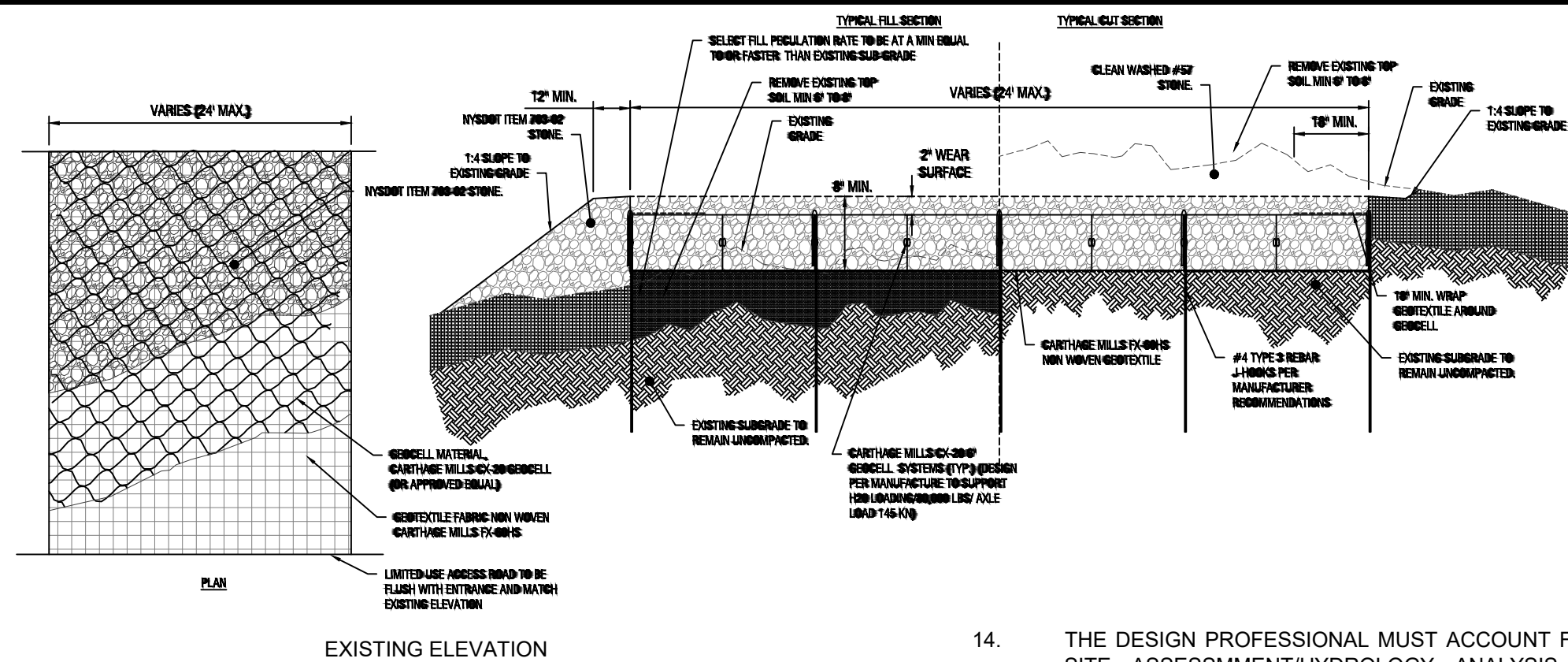
**C-501**

Sheet 8 of 11

PWGC Project Number: DR52404

Unauthorised alteration or addition to this drawing and related documents is a violation of Section 7209 of the New York State Education Law.





**GENERAL NOTES**

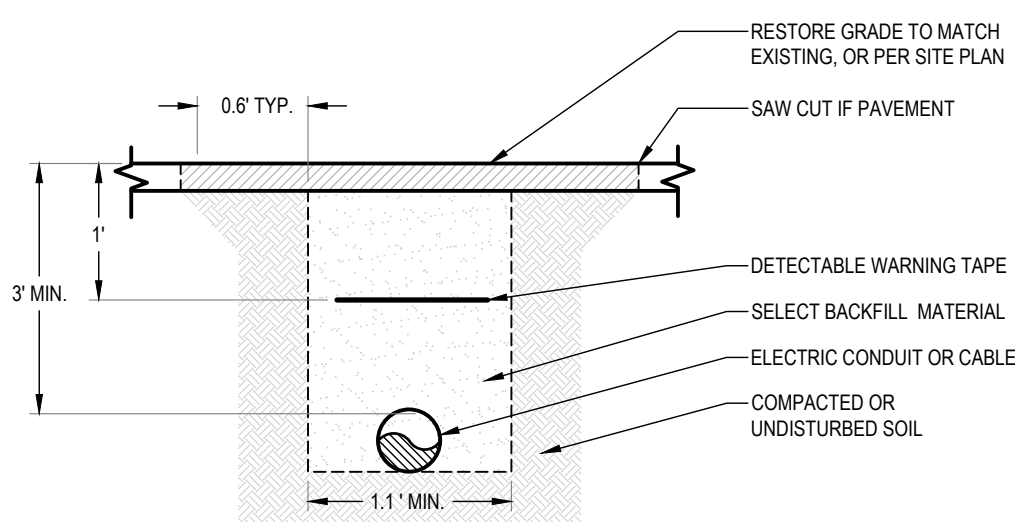
1. PROVIDE A 4800 LB/FT ENHANCED WOVEN GEOTEXTILE SEPARATION LAYER AND INSTALL PER MANUFACTURER RECOMMENDATIONS INCLUDING OVERLAPS BASED ON SUB GRADE CBR.
2. THE GEOCELL SHALL BE CONNECTED WITH TYP 3 REBAR J HOOKS.
3. PROVIDE TYP 3 ANCHORS TO KEEP PANELS OPEN FOR INFILL AS REQUIRED
4. GEOCELL INFILL SHALL BE 3/4" TO 1.5" CRUSHED AGGREGATE WITH FINE LIMITED TO LESS THAN 10% TO ALLOW FREE DRAINAGE.
5. LIMIT THE DROP OF INFILL TO PREVENT PANEL DISTORTION.
6. ASSUME HS-20 LOADING

**PERMEABLE ACCESS ROAD GENERAL NOTES**

1. USE OF THIS DETAIL/CRITERION IS LIMITED TO ACCESS ROADS USED ON AN OCCASIONAL BASIS ONLY (I.E. PROVIDE ACCESS FOR MOWING EQUIPMENT REPAIR OR MAINTENANCE, ETC.)
2. LIMITED USE PERVIOUS ACCESS ROAD IS LIMITED TO LOW IMPACT IRREGULAR MAINTENANCE ACCESS ASSOCIATED WITH RENEWABLE ENERGY PROJECTS IN NEW YORK STATE.
3. REMOVE STUMPS, ROCKS AND DEBRIS AS NECESSARY, FILL VOIDS TO MATCH EXISTING NATIVE SOILS AND COMPACTION LEVEL.
4. REMOVED TOPSOIL MAY BE SPREAD IN ADJACENT AREAS AS DIRECTED BY THE PROJECT ENGINEER. COMPACT TO THE DEGREE OF THE NATIVE INSITU SOIL. DO NOT PLACE IN AN AREA THAT IMPEDES STORMWATER DRAINAGE.
5. GRADE ROADWAY, WHERE NECESSARY TO NATIVE SOIL AND DESIRED ELEVATION MINOR GRADING FOR CROSS SLOPE CUT AND FILL MAY BE REQUIRED
6. REMOVE 6" TO 8" TOPSOIL AS DIRECTED BY ENGINEER.
7. REMOVE REFUSE SOILS AS DIRECTED BY THE PROJECT ENGINEER. DO NOT PLACE IN AN ARE THAT IMPEDES STORMWATER DRAINAGE.
8. ROADWAY WIDTH TO BE DETERMINED BY CLIENT.
9. THE LIMITED USE PERVIOUS ACCESS ROAD CROSS SLOPE SHALL BE 0% IN MOST CASES AND SHOULD NOT EXCEED 5%. THE LONGITUDINAL SLOPE OF THE ACCESS DRIVE SHOULD NOT EXCEED 5%.
10. LIMITED USE PERVIOUS ACCESS ROAD IS NOT INTENDED TO BE UTILIZED FOR CONSTRUCTION WHICH MAY SUBJECT THE ACCESS TO SEDIMENT TRACKING. THIS SPECIFICATION IS TO BE DEVELOPED FOR POST-CONSTRUCTION USE. SOIL RESTORATION PRACTICES MAY BE APPLICABLE TO RESTORE CONSTRUCTION RELATED COMPACTION TO PRE-EXISTING CONDITIONS AND SHOULD BE VERIFIED BY SOIL PENETROMETER READINGS. THE PENETROMETER READINGS SHALL BE COMPARED TO THE RESPECTIVE RECORDED READINGS TAKEN PRIOR TO CONSTRUCTION, EVERY 100 LINEAR FEET ALONG THE PROPOSED ROADWAY.
11. TO ENSURE THAT SOIL IS NOT TRACKED ONTO THE LIMITED USE PERVIOUS ACCESS ROAD, IT SHALL NOT BE USED BY CONSTRUCTION VEHICLES TRANSPORTING SOIL, FILL MATERIAL, ETC. IF THE LIMITED USE PERVIOUS ACCESS IS COMPLETED DURING INITIAL PHASES OF CONSTRUCTION, A STANDARD NEW YORK STATE STABILIZED CONSTRUCTION ACCESS SHALL BE CONSTRUCTED AND UTILIZED TO REMOVE SEDIMENT FROM CONSTRUCTION VEHICLES AND EQUIPMENT PRIOR TO ENTERING THE LIMITED USE PERVIOUS ACCESS ROAD FROM ANY LOCATION ON, OR OFF SITE. MAINTENANCE OF THE PERVIOUS ACCESS ROAD WILL BE REQUIRED IF SEDIMENT IS OBSERVED WITHIN THE CLEAN STONE.
12. THE LIMITED USE PERVIOUS ACCESS ROAD SHALL NOT BE CONSTRUCTED OR USED UNTIL ALL AREAS SUBJECT TO RUNOFF ONTO THE PERVIOUS ACCESS HAVE ACHIEVED FINAL STABILIZATION.
13. PROJECTS SHOULD AVOID INSTALLATION OF THE LIMITED USE PERVIOUS ACCESS ROAD IN POORLY DRAINED AREAS, HOWEVER IF NO A

**GRAVEL ACCESS ROAD DETAIL**

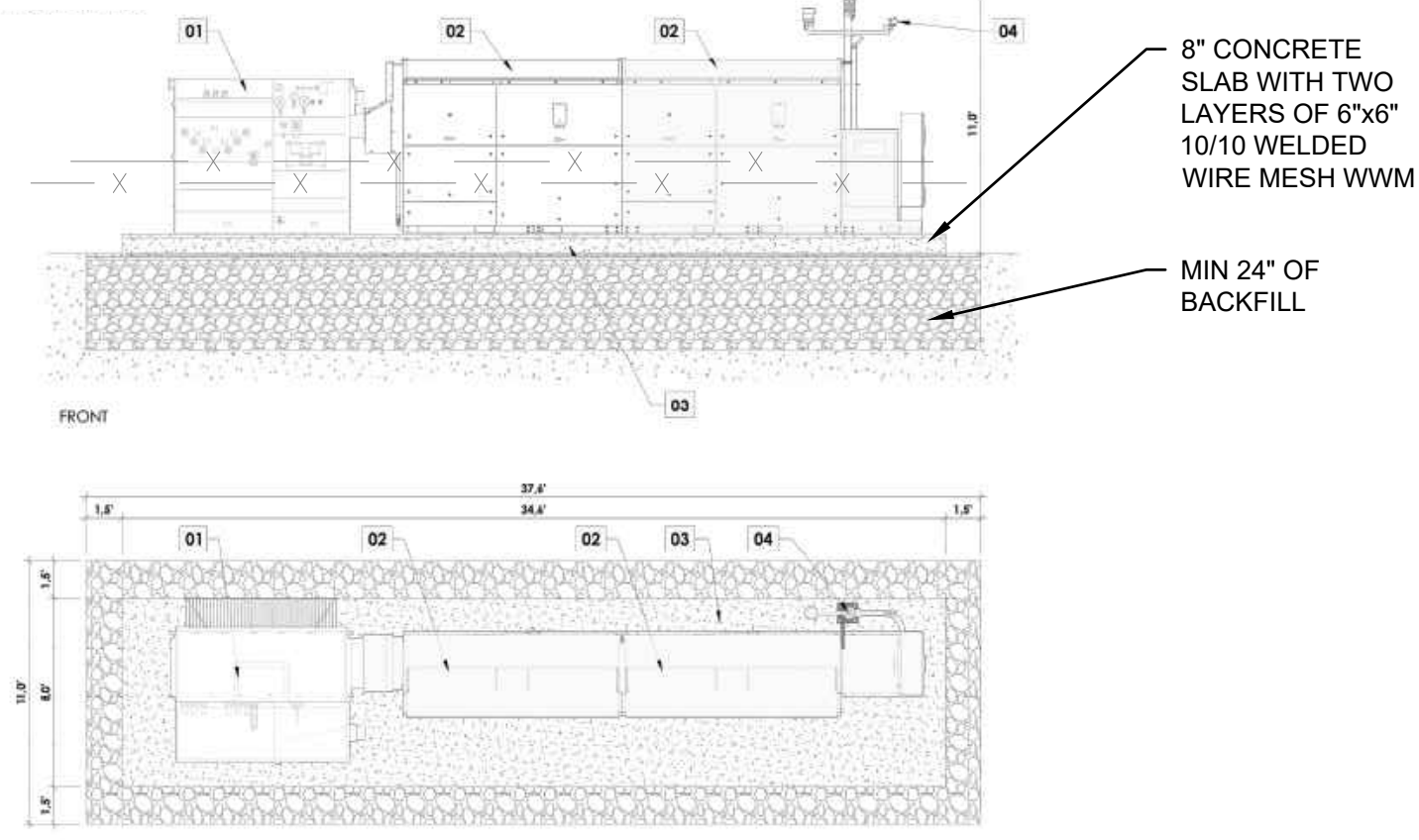
NOT TO SCALE



**ELECTRICAL TRENCH DETAIL**

NOT TO SCALE

- 01 - TRANSFORMER
- 02 - INVERTER
- 03 - REINFORCED CONCRETE SLAB PSI 3500
- 04 - AUXILIARY EQUIPMENT PAD



**CONCRETE EQUIPMENT PAD DETAIL**

NOT TO SCALE

14. THE DESIGN PROFESSIONAL MUST ACCOUNT FOR THE LIMITED USE PERVIOUS ACCESS ROAD IN THEIR SITE ASSESSMENT/HYDROLOGY ANALYSIS. IF THE HYDROLOGY ANALYSIS SHOWS THAT THE HYDROLOGY HAS BEEN ALTERED FROM PRE- TO POST-DEVELOPMENT CONDITIONS (SEE APPENDIX A OF GP-0-20-001 FOR THE DEFINITION OF "ALTER THE HYDROLOGY..."), THE DESIGN MUST INCLUDE THE NECESSARY DETENTION/RETENTION PRACTICES TO ATTENUATE THE RATES (10 AND 100 YEAR EVENTS) TO PRE-DEVELOPMENT CONDITIONS.

**GEOCELL MATERIAL NOTES:**

1. THE GEOCELL, OR COMPARABLE PRODUCT, IS SUGGESTED FOR USE ON ROAD PROFILES EXCEEDING 5%.
2. THE GEOCELL PRODUCT IS INTENDED TO LIMIT SHIFTING STONE MATERIAL DURING USE.
3. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
4. WHERE REQUIRED, A NATIVE SOIL WEDGE SHALL BE PLACED TO ACCOMMODATE ROAD CROSS SLOPE OF 2%. NATIVE SOIL SHALL BE COMPACTED TO MATCH EXISTING SOIL CONDITIONS.
5. GRAVEL FILL MATERIAL SHALL CONSIST OF 1-4" CLEAN, DURABLE, SHARP-ANGLED CRUSHED STONE OF UNIFORM QUALITY, MEETING THE SPECIFICATIONS OF NYSDOT ITEM 703-02, SIZE DESIGNATION 3-5 OF TABLE 703-4. STONE MAY BE PLACED IN FRONT OF, AND SPREAD WITH, A TRACKED VEHICLE. GRAVEL SHALL NOT BE COMPACTED.
6. GEOCELL SYSTEM SHALL BE CARTHAGE MILLS CX-20 6" HS20 LOADING OR APPROVED EQUAL. GEOCELL SHALL BE DESIGNED BASED ON EXISTING SOIL CONDITIONS AND PROPOSED HAUL ROAD SLOPES.
7. LIMITED USE PERVIOUS ACCESS ROAD SHALL BE TOP DRESSED AS REQUIRED WITH ONLY 1-4" CRUSHED STONE, SIZE 3A, MEETING NYSDOT ITEM 703-02 SPECIFICATIONS.
8. THE TOP EDGES OF ADJACENT CELL WALLS SHALL BE FLUSH WHEN CONNECTING. ALIGN THE I-SLOTS FOR INTERLEAF AND END TO END CONNECTIONS. THE GEOCELL PANELS SHALL BE CONNECTED WITH TYPE 3 J HOOKS AT EACH INTERLEAF AND END TO END CONNECTIONS. REFER TO MANUFACTURER'S SPECIFICATION FOR PROPER INSTALLATION, TYING AND CONNECTIONS.
9. PREPARE THE SUBGRADE AS SHOWN ON THE CONSTRUCTION DRAWINGS.
10. COMPACT THE SOIL TO A MINIMUM 95% STANDARD PROCTOR.
11. VERIFY THAT THE SUBGRADE STRENGTH, IF UNACCEPTABLE, THE SOILS SHALL BE REMOVED AND REPLACED AS DIRECTED BY THE ENGINEER.
12. WHERE REQUIRED, PROVIDE GEOTEXTILE SEPARATION LAYER.
13. EXPAND THE GEOCELL SECTIONS INTO POSITION AND CONNECT THE END TO END INTERLEAF CONNECTIONS WITH ATRA KEYS.
14. PLACE THE SPECIFIED INFILL MATERIAL TO 2 INCHES ABOVE CELL WALLS AND COMPACT TO A MINIMUM 95% STANDARD PROCTOR.
15. PROVIDE ADDITIONAL SURFACE MATERIAL AS SPECIFIED.

BASIS OF DESIGN: CARTHAGE MILL

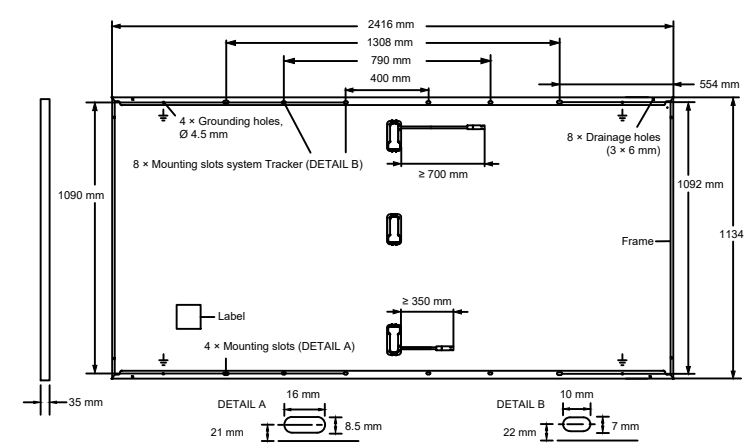
**WOVEN GEOTEXTILE MATERIAL NOTES:**

1. GEOTEXTILE MATERIAL TO B CARTHAGE MILL FX-60HS OR APPROVED EQUAL.

BASIS OF DESIGN: CARTHAGE MILLS

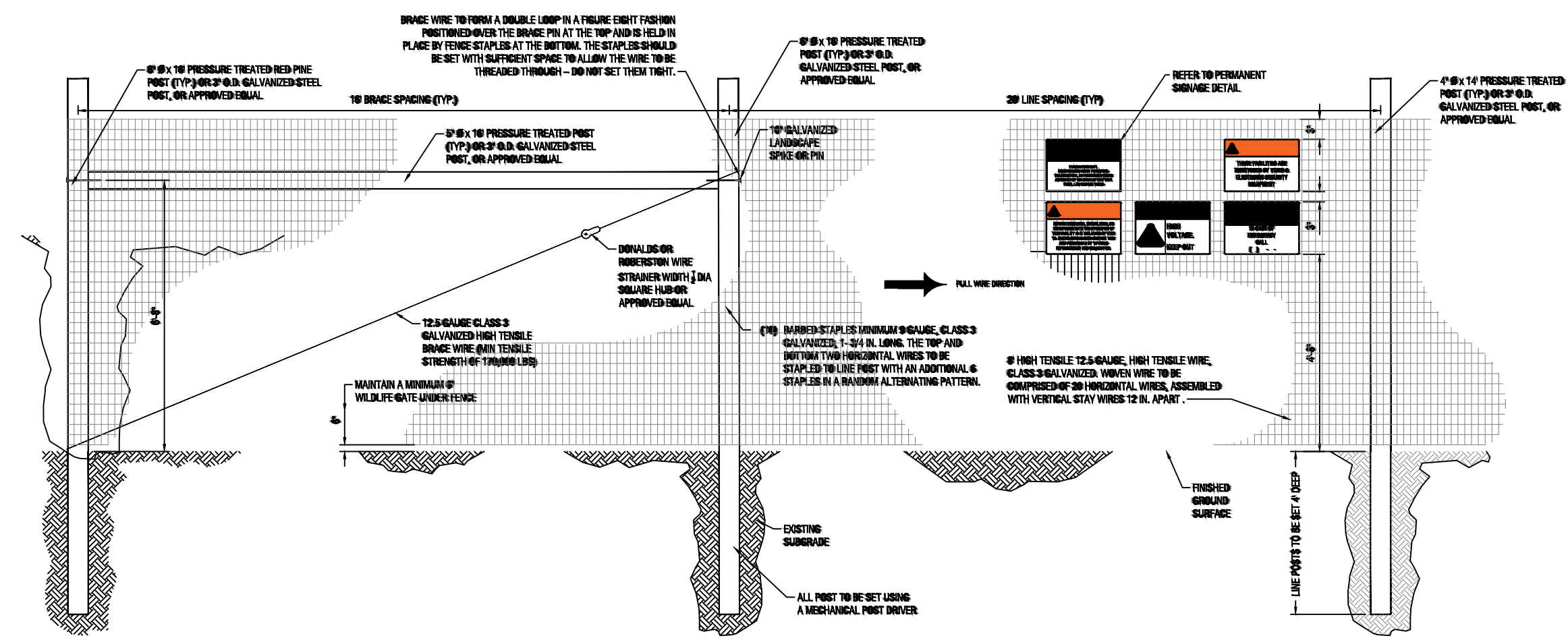
**MECHANICAL SPECIFICATION**

Format	2416 mm x 1134 mm x 35 mm (including frame)
Weight	34.4 kg
Front Cover	2 mm thermally pre-stressed glass with anti-reflection technology
Back Cover	2 mm semi-tempered glass
Frame	Anodised aluminium
Cell	6 x 26 monocrystalline Q ANTUM solar half cells
Junction box	53-101 mm x 32-60 mm x 15-18 mm Protection class IP67, with bypass diodes
Cable	4 mm <sup>2</sup> Solar cable; (+) ≥ 700 mm, (-) ≥ 350 mm
Connector	Stäubli MC4-Evo2, Hanhwa Q CELLS HQC4; IP68



**SOLAR PANEL MECHANICAL SPECIFICATION DETAIL**

NOT TO SCALE

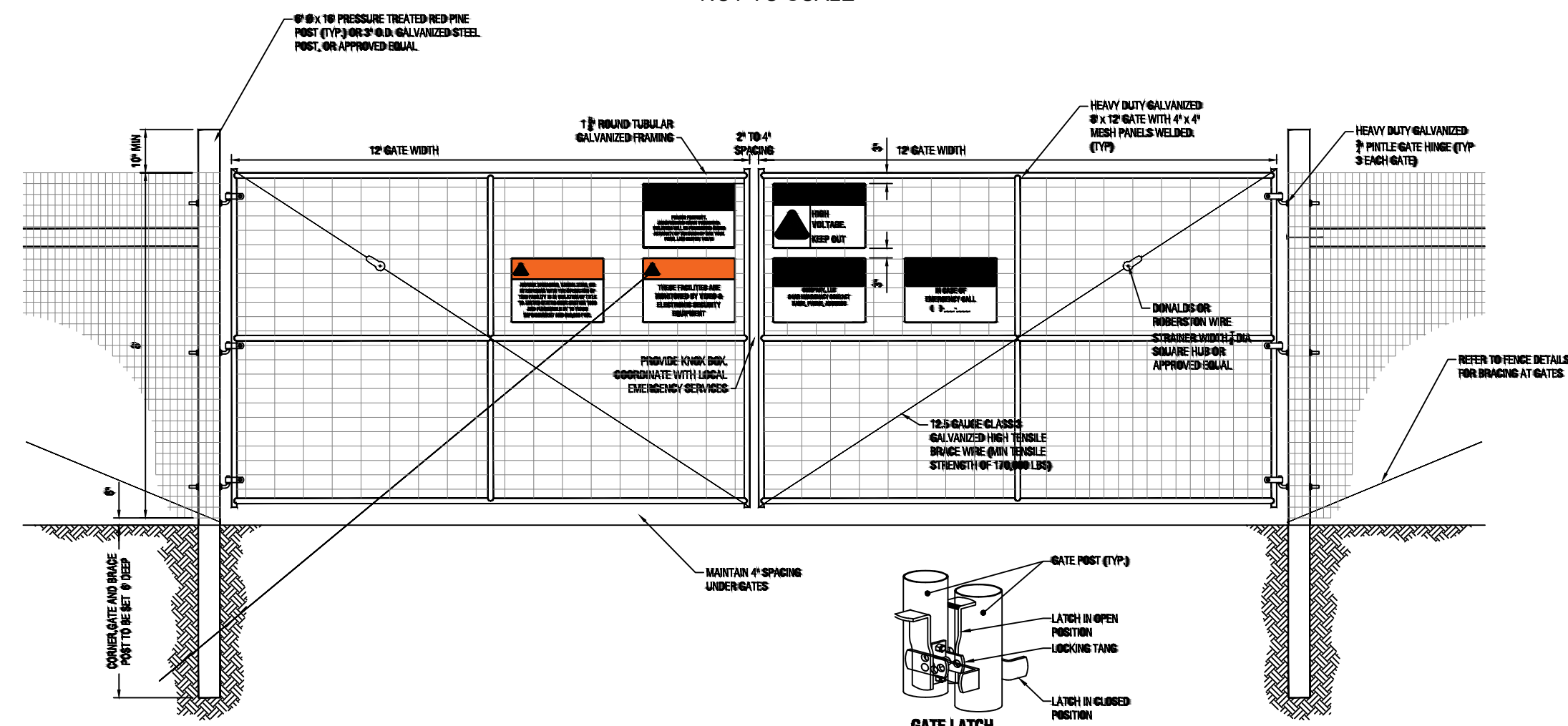


**BRACING NOTES**

1. BRACING IS REQUIRED AT ALL CORNER, END GATE, AND PULL ASSEMBLIES IN THE FENCE.
2. CORNERS ARE REQUIRED AT ALL POINTS WHERE THE FENCE ALIGNMENT CHANGES 15 DEGREES OR MORE THREE, 6 IN. X 16 FT. VERTICAL POSTS AND TWO 5 IN. X 16 FT. HORIZONTAL BRACES ARE REQUIRED FOR EACH CORNER.
3. END BRACING IS REQUIRED WHERE THE FENCE ENDS AT A BUILDING OR ON EACH SIDE OF A GATE OPENING. TWO, 6 IN. X 16 FT. VERTICAL POSTS AND ONE 5 IN. X 16 FT. HORIZONTAL BRACE ARE REQUIRED FOR EACH END BRACE.
4. PULL ASSEMBLIES ARE REQUIRED IN STRAIGHT SECTIONS OF FENCE SO THAT THE MAXIMUM DISTANCE BETWEEN CORNERS DOES NOT EXCEED 1,320 DT. TWO 6 IN. X 16 FT. VERTICAL POSTS AND ONE 5 IN. X 16 FT. BRACE ARE REQUIRED
5. DOUBLE BRACES (FIGURE 4) SHOULD BE USED ON EACH END FOR STRAIGHT FENCE LINES EXCEEDING 1,000 FT. DOUBLE END BRACES REQUIRE THREE 6 IN. X 16 FT. HORIZONTAL BRACES.

**8-FT DEER FENCE DETAIL**

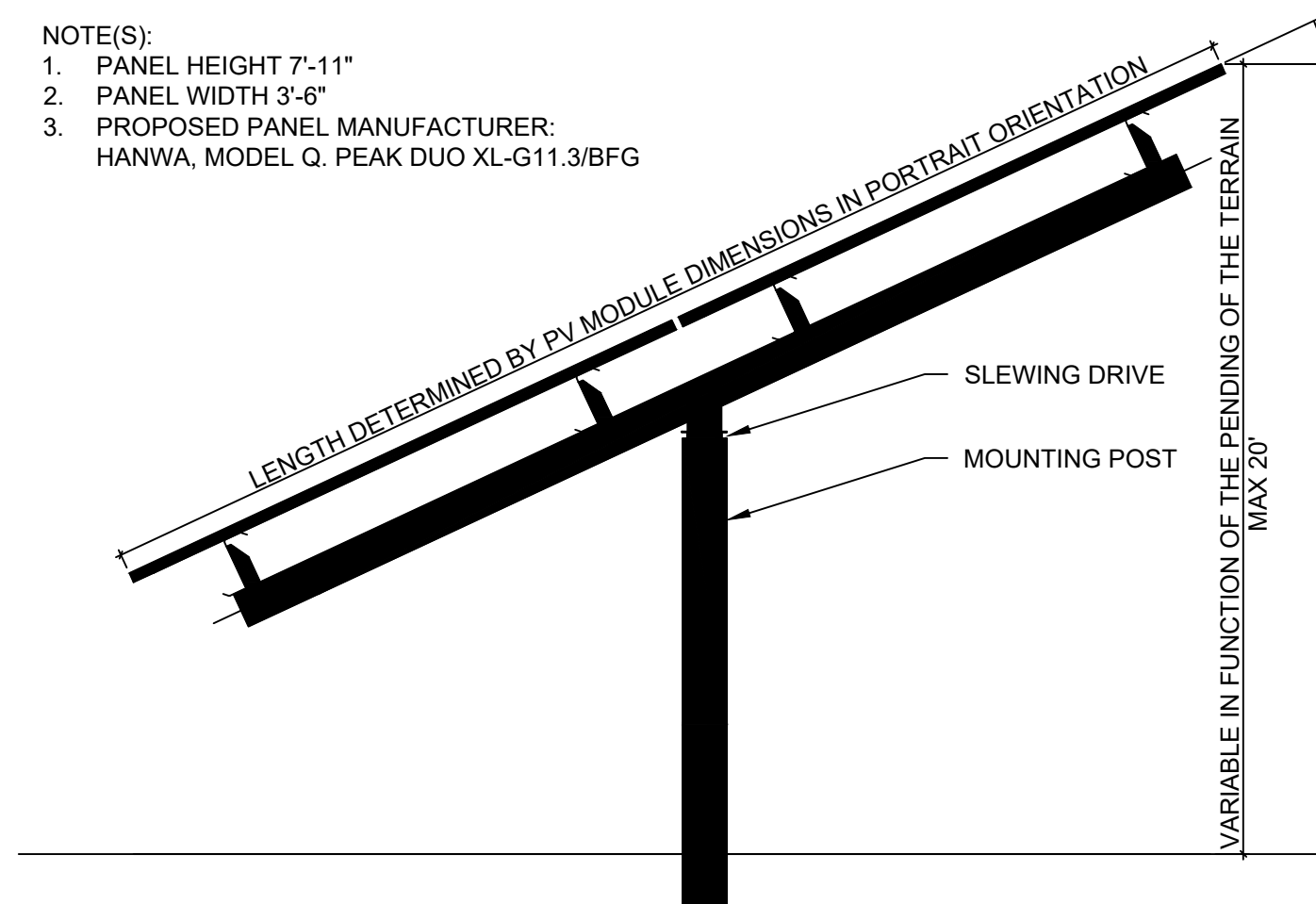
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**8-FT DEER FENCE GATE DETAIL**

NOT TO SCALE

- NOTE(S):
1. PANEL HEIGHT 7'-11"
  2. PANEL WIDTH 3'-6"
  3. PROPOSED PANEL MANUFACTURER: HANWA, MODEL Q. PEAK DUO XL-G11.3/BFG



**TYPICAL RACK SECTION DETAIL**

NOT TO SCALE



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**CONSULTANTS**

FOR PERMITTING PURPOSES ONLY NOT FOR CONSTRUCTION

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1	CLIENT REVIEW	04/05/2024
Number	Revision Description	Revision Date

Designed By		Date Submitted	
Drawn By	HLW	Date Created	03/28/24
Approved By	MTS	Scale	AS NOTED

Client:  
**NY LANSING II, LLC**  
P.O. BOX 384  
CALLICOON, NY 12783

**NORTH TRIPHAMMER ROAD SOLAR FARM CONCEPTUAL SITE PLAN**

Project Address:  
**NORTH TRIPHAMMER ROAD**  
**TOWN OF LANSING**  
**TOMPKINS COUNTY, NEW YORK**

County Tax Map Number: 44-1-1.2 & 44-1-3.3  
Contract Number: ---  
Regulatory Reference Number: ---

Title of Drawing:

**SITE DETAILS**

State of New York  
MICHAEL SCARF  
103321  
LICENSED PROFESSIONAL ENGINEER

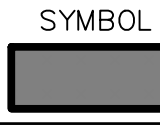
Drawing Number:  
**C-600**

Sheet 9 of 11  
PRDC Project Number:  
**DRS2404**

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**STANDARD AND SPECIFICATIONS FOR TEMPORARY CONSTRUCTION AREA SEEDING FOR WINTER SHUTDOWN**



- CONSTRUCTION SPECIFICATIONS**
1. THE AREA MUST BE ROUGH GRADED AND SLOPES PHYSICALLY STABLE. LARGE DEBRIS AND ROCKS ARE USUALLY REMOVED.
  2. SEED BED MUST BE SEEDED WITHIN 24 HOURS OF DISTURBANCE OR SCARIFICATION OF THE SOIL SURFACE WILL BE NECESSARY PRIOR TO SEEDING.
  3. FERTILIZER OR LIME ARE NOT TYPICALLY USED FOR TEMPORARY SEEDINGS.
  4. LATE FALL OR EARLY WINTER, THEN SEED CERTIFIED 'ARROSTOCK' WINTER RYE AT 100 LBS. PER ACRE (2.5 LBS./1000 SQ. FT.).
  5. HYDRO-SEEDING METHOD TO BE USED WHICH WILL PROVIDE UNIFORM APPLICATION OF SEED TO THE AREA AND RESULT IN RELATIVELY GOOD SOIL TO SEED CONTACT.
  6. MULCH THE AREA WITH WOOD FIBER-HYDRO-MULCH OR OTHER SPRAYABLE PRODUCTS APPROVED FOR EROSION CONTROL.

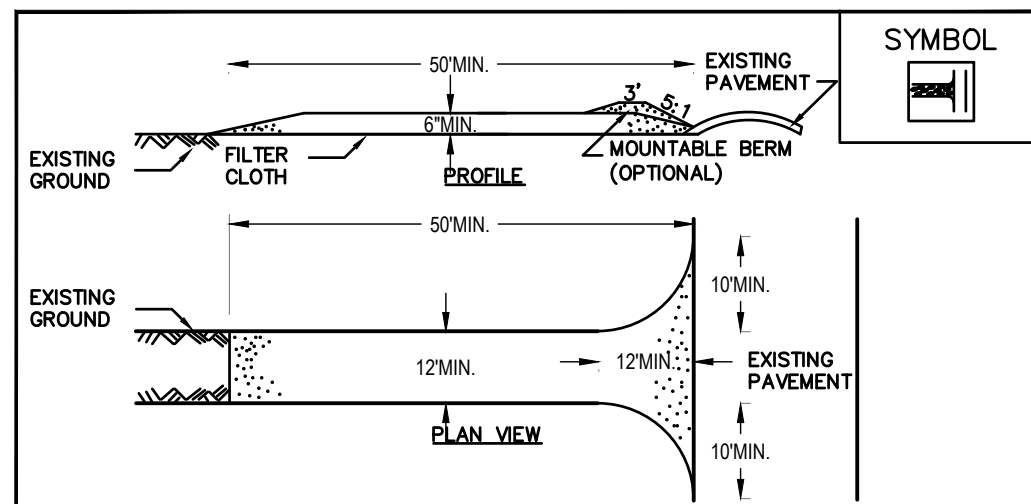
**STANDARD AND SPECIFICATIONS FOR LOOSE STABILIZATION BLANKETS FOR WINTER SHUTDOWN**

**HYDRAULICALLY APPLIED BLANKETS**  
 THESE BLANKETS ARE FORMED BY MIXING DIFFERENT TYPES OF MATERIALS WITH WATER AND ARE THEN APPLIED USING STANDARD HYDROSEEDING EQUIPMENT. THESE BLANKETS SHOULD NOT BE USED IN AREAS OF CONCENTRATED FLOW SUCH AS DITCHES AND CHANNELS.  
**FLEXIBLE GROWTH MEDIUM (FGM)** - THIS METHOD HAS THE ADDED COMPONENT OF 1/2 INCH LONG, CRIMPED MANMADE FIBERS WHICH ADD A MECHANICAL BOND TO THE CHEMICAL BOND PROVIDED BY BRNS. THIS INCREASES THE BLANKET'S RESISTANCE TO BOTH HANDS OF IMPACT AND EROSION DUE TO RUNOFF. UNLIKE BRNS, A FLEXIBLE GROWTH MEDIUM TYPICALLY DOES NOT REQUIRE A CURING TIME TO BE EFFECTIVE. PROPERLY APPLIED, AN FGM IS ALSO VERY EFFECTIVE.  
 THERE IS NO NEED TO SMOOTH THE SLOPE PRIOR TO APPLICATION. IN FACT SOME ROUGHENING OF THE SURFACE (EITHER NATURAL OR MECHANICALLY INDUCED) IS PREFERABLE.  
 HOWEVER, LARGE ROCKS (>9 INCHES) AND EXISTING RILLS SHOULD BE REMOVED PRIOR TO APPLICATION. MIXING AND APPLICATION RATES SHOULD FOLLOW MANUFACTURER'S RECOMMENDATIONS.

- CONSTRUCTION SPECIFICATIONS**
1. FOMS ARE TYPICALLY APPLIED IN TWO STAGES. UNLESS SPECIFICALLY RECOMMENDED TO BE APPLIED IN ONE APPLICATION BY THE MANUFACTURER, THE SEED MIXTURE AND SOIL AMENDMENTS SHOULD BE APPLIED FIRST.
  2. AFTER THE SEED MIXTURE IS APPLIED, THE HYDRAULICALLY APPLIED BLANKETS SHOULD BE SPRAYED OVER THE AREA AT THE REQUIRED APPLICATION RATE, ACCORDING TO THE MANUFACTURER'S RECOMMENDATIONS.

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 NEW YORK STATE SOIL & WATER CONSERVATION COMMITTEE

**SEEDING/STABILIZATION BLANKET SPECIFICATIONS**

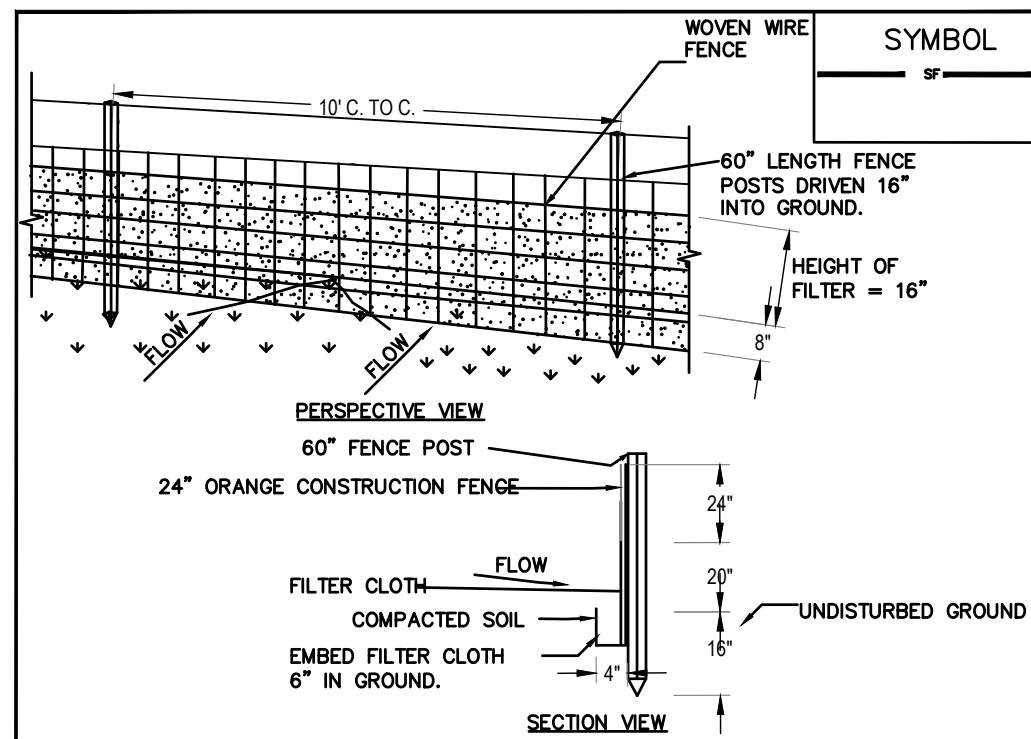


**CONSTRUCTION SPECIFICATIONS**

1. STONE SIZE - USE 2" STONE, OR RECLAIMED OR RECYCLED CONCRETE EQUIVALENT.
2. LENGTH - NOT LESS THAN 50 FEET (EXCEPT ON A SINGLE RESIDENCE LOT WHERE A 30 FOOT MINIMUM LENGTH WOULD APPLY).
3. THICKNESS - NOT LESS THAN SIX (6) INCHES.
4. WIDTH - TWELVE (12) FOOT MINIMUM, BUT NOT LESS THAN THE FULL WIDTH AT POINTS WHERE INGRESS OR EGRESS OCCURS. TWENTY-FOUR (24) FOOT IF SINGLE ENTRANCE TO SITE.
5. FILTER CLOTH - WILL BE PLACED OVER THE ENTIRE AREA PRIOR TO PLACING OF STONE.
6. SURFACE WATER - ALL SURFACE WATER FLOWING OR DIVERTED TOWARD CONSTRUCTION ENTRANCES SHALL BE PIPED ACROSS THE ENTRANCE. IF PIPING IS IMPRACTICAL, A MOUNTABLE BERM WITH 5:1 SLOPES WILL BE PERMITTED.
7. MAINTENANCE - THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION WHICH WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHTS-OF-WAY. ALL SEDIMENT SPILLED, DROPPED, WASHED OR TRACTED ONTO PUBLIC RIGHTS-OF-WAY MUST BE REMOVED IMMEDIATELY.
8. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH STONE AND WHICH DRAINS INTO AN APPROVED SEDIMENT TRAPPING DEVICE.
9. PERIODIC INSPECTION AND NEEDED MAINTENANCE SHALL BE PROVIDED AFTER EACH RAIN.

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**STABILIZED CONSTRUCTION ENTRANCE**



**CONSTRUCTION SPECIFICATIONS**

1. WOVEN WIRE FENCE TO BE FASTENED SECURELY TO FENCE POSTS WITH WIRE TIES OR STAPLES. POSTS SHALL BE STEEL EITHER "T" OR "U" TYPE OR HARDWOOD.
2. FILTER CLOTH AND ORANGE CONSTRUCTION FENCING TO BE FASTENED SECURELY TO WOVEN WIRE FENCE WITH TIES SPACED EVERY 24" AT TOP AND MID SECTION. FENCE SHALL BE WOVEN.
3. WHEN TWO SECTIONS OF FILTER CLOTH AND ORANGE CONSTRUCTION FENCING ADJOIN EACH OTHER THEY SHALL BE OVER-LAPPED BY SIX INCHES AND FOLDED. FILTER CLOTH SHALL BE EITHER FILTER X, MIRAFI 100X, STABILUNKA T140N, OR APPROVED EQUIVALENT.
4. PREFABRICATED UNITS SHALL BE GEOTAF, ENVROFENCE, OR APPROVED EQUIVALENT.
5. MAINTENANCE SHALL BE PERFORMED AS NEEDED AND MATERIAL REMOVED WHEN 'BULGES' DEVELOP IN THE SILT FENCE.

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**SILT FENCE**

**CONSTRUCTION SPECIFICATIONS**

1. CLEAN AND STRIP ROADED AND PARKING AREAS OF ALL VEGETATION, ROOTS AND OTHERS OBJECTIONABLE MATERIAL.
2. LOCATE PARKING AREAS ON NATURALLY FLAT AREAS AS AVAILABLE. KEEP GRADES SUFFICIENT FOR DRAINAGE, BUT NOT MORE THAN 2 TO 3 PERCENT.
3. PROVIDE SURFACE DRAINAGE AND DIVERT EXCESS RUNOFF TO STABILIZED AREAS.
4. MAINTAIN CUT AND FILL SLOPES TO 2:1 OR FLATTER AND STABILIZED WITH VEGETATION AS SOON AS GRADING IS ACCOMPLISHED.
5. SPREAD 6-INCH COURSE OF CRUSHED STONE EVENLY OVER THE FULL WIDTH OF THE ROAD AND SMOOTH TO AVOID DEPRESSIONS.
6. PROVIDE APPROPRIATE SEDIMENT CONTROL MEASURES TO PREVENT OFFSITE SEDIMENTATION.

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**CONSTRUCTION ROAD STABILIZATION**

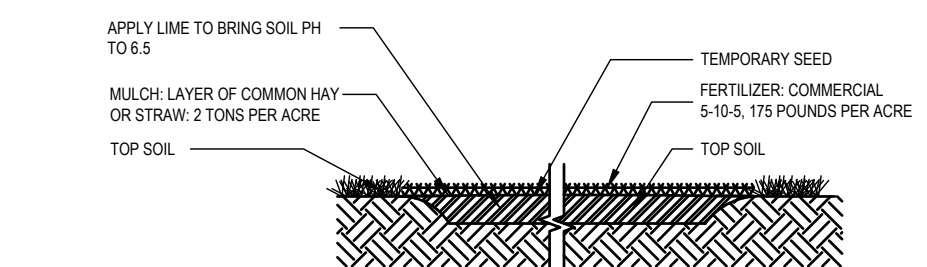
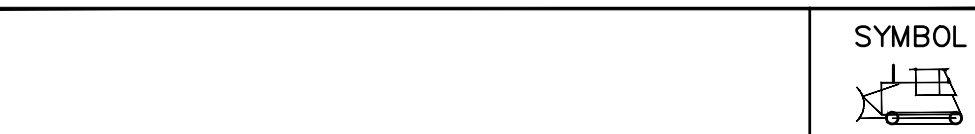
**CONSTRUCTION SPECIFICATIONS**

1. ALL GRADED OR DISTURBED AREAS INCLUDING SLOPES SHALL BE PROTECTED DURING CLEARING AND CONSTRUCTION IN ACCORDANCE WITH THE APPROVED SEDIMENT CONTROL PLAN UNTIL THEY ARE PERMANENTLY STABILIZED.
2. ALL SEDIMENT CONTROL PRACTICES AND MEASURES SHALL BE CONSTRUCTED, APPLIED AND MAINTAINED IN ACCORDANCE WITH THE APPROVED SEDIMENT CONTROL PLAN AND THE "STANDARDS AND SPECIFICATIONS FOR SOIL EROSION AND SEDIMENT CONTROL IN DEVELOPING AREAS".
3. TOPSOIL REQUIRED FOR THE ESTABLISHMENT OF VEGETATION SHALL BE STOCKPILED IN AMOUNT NECESSARY TO COMPLETE FINISHED GRADING OF ALL EXPOSED AREAS.
4. AREAS TO BE FILLED SHALL BE CLEARED, GRUBBED, AND STRIPPED OF TOPSOIL TO REMOVE TREES, VEGETATION, ROOTS OR OTHER OBJECTIONABLE MATERIAL.
5. AREAS WHICH ARE TO BE TOPSOILED SHALL BE SCARIFIED TO A MINIMUM DEPTH OF FOUR INCHES PRIOR TO PLACEMENT OF TOPSOIL.
6. ALL FILLS SHALL BE COMPACTED AS REQUIRED TO REDUCE EROSION, SLIPPAGE, SETTLEMENT, SUBSIDENCE OR OTHER RELATED PROBLEMS. FILL INTENDED TO SUPPORT BUILDINGS, STRUCTURES AND CONDUITS, ETC. SHALL BE COMPACTED IN ACCORDANCE WITH LOCAL REQUIREMENTS OR CODES.
7. ALL FILL TO BE PLACED AND COMPACTED IN LAYERS NOT TO EXCEED 8 INCHES IN THICKNESS.
8. EXCEPT FOR APPROVED LANDFILLS, FILL MATERIAL SHALL BE FREE OF FROZEN PARTICLES, BRUSH, ROOTS, SOIL, OR OTHER FOREIGN OR OTHER OBJECTIONABLE MATERIALS THAT WOULD INTERFERE WITH OR PREVENT CONSTRUCTION OF SATISFACTORY FILLS.
9. FROZEN MATERIALS OR SOFT, MUCKY OR HIGHLY COMPRESSIBLE MATERIALS SHALL NOT BE INCORPORATED IN FILLS.
10. FILL SHALL NOT BE PLACED ON SATURATED OR FROZEN SURFACES.
11. ALL BENCHES SHALL BE KEPT FREE OF SEDIMENT DURING ALL PHASES OF DEVELOPMENT.
12. SEEPS OR SPRINGS ENCOUNTERED DURING CONSTRUCTION SHALL BE HANDLED IN ACCORDANCE WITH THE STANDARD AND SPECIFICATION FOR SUBSURFACE DRAIN OR OTHER APPROVED METHOD.
13. ALL GRADED AREAS SHALL BE PERMANENTLY STABILIZED IMMEDIATELY FOLLOWING FINISHED GRADING.
14. STOCKPILES, BORROW AREAS AND SPOIL AREAS SHALL BE SHOWN ON THE PLANS AND SHALL BE SUBJECT TO THE PROVISIONS OF THIS STANDARD AND SPECIFICATION.

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**LANDGRADING SPECIFICATIONS**

**FOR PERMITTING PURPOSES ONLY NOT FOR CONSTRUCTION**

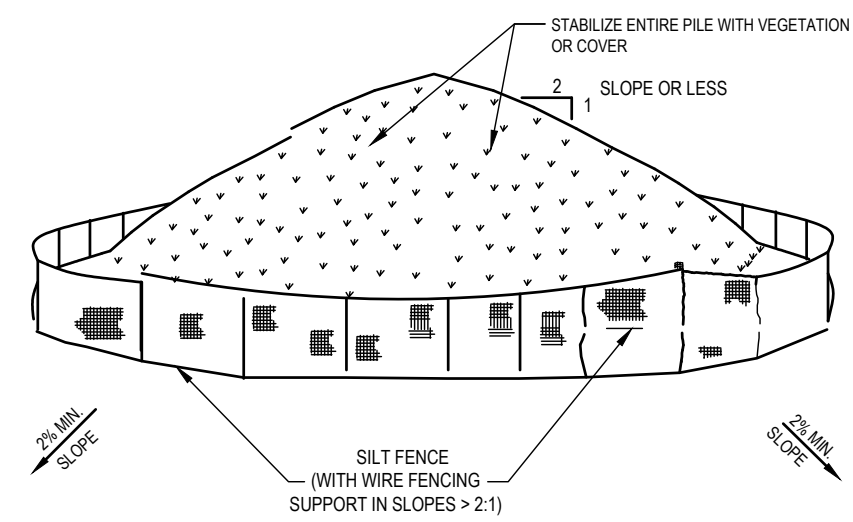


**CONSTRUCTION SPECIFICATIONS**

1. TOP SOIL, SEED, MULCH, AND FERTILIZER DISTURBED SOIL AREAS THAT WILL BE EXPOSED FOR 14 DAYS OR MORE

U.S. DEPARTMENT OF AGRICULTURE  
 NATURAL RESOURCES CONSERVATION SERVICE  
 NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
 NEW YORK STATE SOIL & WATER CONSERVATION COMMITTEE

**TEMPORARY TOPSOIL FERTILIZER, SEED AND MULCH DETAIL**



**INSTALLATION NOTES**

1. AREA CHOSEN FOR STOCKPILING OPERATIONS SHALL BE DRY AND STABLE.
2. MAXIMUM SLOPE OF STOCKPILE SHALL BE 2:1.
3. UPON COMPLETION OF SOIL STOCKPILING, EACH PILE SHALL BE SURROUNDED WITH EITHER SILT FENCING OR STRAINBABLES, THEN STABILIZED WITH VEGETATION OR COVERED.
4. SEE SILT FENCE DETAIL ABOVE.
5. SILT FENCE TO BE 10' FROM TOE OF SLOPE AND 10' FROM PROPERTY LINES.

**SOIL STOCK PILE DETAIL**

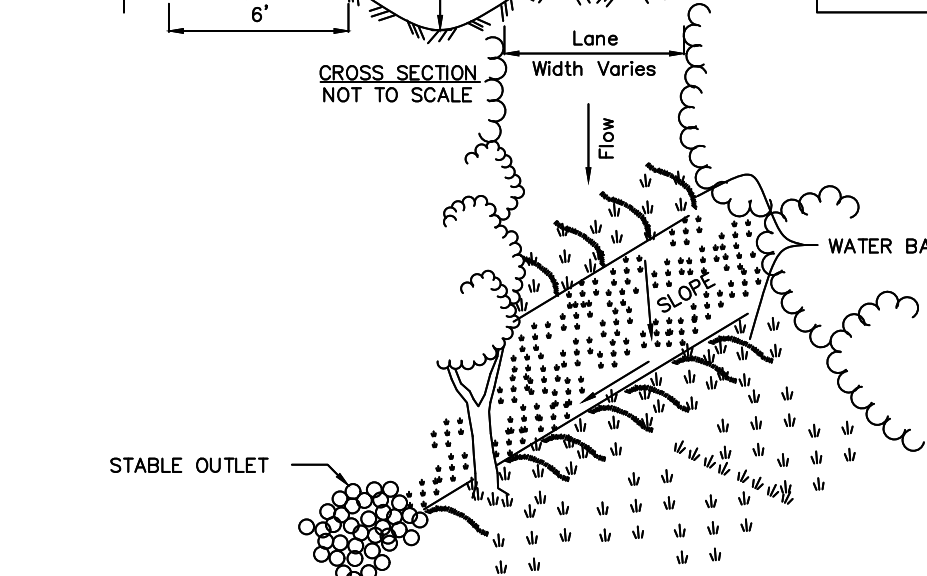
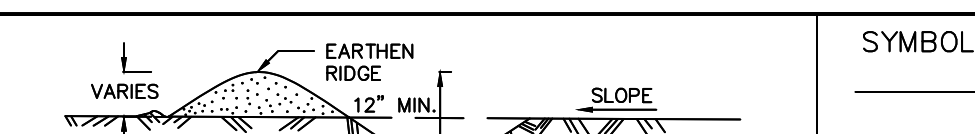
**SEEDING NOTE:**

1. ERNEST CONSERVATION SEEDS NORTHEAST POLLINATOR 3' MIX - ERNMX-612 TO BE SEEDED BELOW SOLAR PANELS. SEED AT 40 LB/AC WITH 30 LB/AC OF A COVER CROP. FOR A COVER CROP USE EITHER GRAIN OATS (1 JAN TO 31 JUL) OR GRAIN RYE (1 AUG TO 31 DEC).

NORTHEAST SOLAR POLLINATOR 3' MIX - ERNMX-612	
SHEEP FESCUE, VARIETY NOT STATED	94.90%
BUTTERFLY MILKWEED	2.50%
PARTRIDGE PEA, PA ECOTYPE	2.00%
SHOWY EVENING PRIMROSE	0.30%
ZIGZAG SPIDERWORT, VA ECOTYPE	0.30%

**WINTER SHUTDOWN CONSTRUCTION SCHEDULE**

1. POST CLEARING THE EXPOSED SOIL SHALL BE COVERED WITH MATERIAL(S) AS SET FORTH IN THE TECHNICAL STANDARD. NEW YORK STANDARDS AND SPECIFICATIONS FOR EROSION AND SEDIMENT CONTROL, TO PREVENT THE EXPOSED SOIL FROM ERODING (SEE STANDARD AND SPECIFICATIONS FOR TEMPORARY CONSTRUCTION AREA SEEDING/STABILIZATION FOR WINTER SHUT DOWN, ABOVE).
2. REGULARLY INSPECT, MAINTAIN AND RE-SEED ANY AREAS THAT ARE NOT ADEQUATELY STABILIZED UP UNTIL THE JULY 1 START DATE AND THEREAFTER, UNTIL ALL DISTURBED AREAS ARE PERMANENTLY STABILIZED.
3. SITE INSPECTIONS ARE TO TAKE PLACE TWICE PER MONTH WITH PHOTOS PROVIDED TO THE TOWN TO DEMONSTRATE THAT THE SITE REMAINS STABILIZED/PROTECTED UNTIL CONSTRUCTION STARTS.
4. ONCE CONSTRUCTION STARTS, INSPECTIONS SHALL CONTINUE MONTHLY, WITH PHOTOS SUBMITTED TO THE TOWN, TO ENSURE THAT THE TEMPORARY STABILIZATION MEASURES REMAIN IN PLACE IN AREAS NOT UNDER ACTIVE CONSTRUCTION.

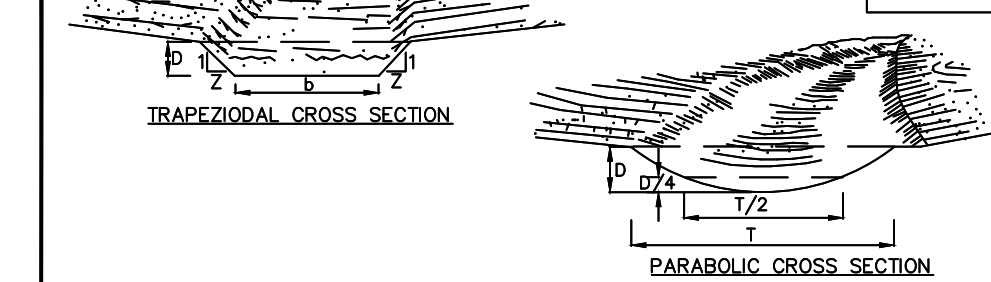
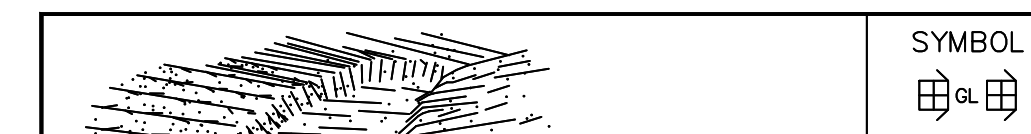


**CONSTRUCTION SPECIFICATIONS**

1. INSTALL THE WATER BAR AS SOON AS THE RIGHT OF WAY IS CLEARED AND GRADED.
2. DISK OR STRIP THE SOD FROM THE BASE FOR THE CONSTRUCTED RIDGE BEFORE PLACING FILL.
3. TRACK THE RIDGE TO COMPACT IT TO THE DESIGN CROSS SECTION.
4. THE OUTLET SHALL BE LOCATED ON AN UNDISTURBED AREA. FIELD SPACING WILL BE ADJUSTED TO USE THE MOST STABLE OUTLET AREAS. OUTLET PROTECTION WILL BE PROVIDED WHEN NATURAL AREAS ARE NOT ADEQUATE.
5. VEHICLE CROSSING SHALL BE STABILIZED WITH GRAVEL. EXPOSED AREAS SHALL BE SEEDED AND MULCHED WITHIN 2 DAYS.
6. PERIODICALLY INSPECT WATER BARS FOR EROSION DAMAGE AND SEDIMENT. CHECK OUTLET AREAS AND MAKE REPAIRS AS NEEDED TO RESTORE OPERATION.

ADAPTED FROM DETAILS PROVIDED BY: USDA - NRCS, NEW YORK STATE DEPARTMENT OF TRANSPORTATION, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, NEW YORK STATE SOIL & WATER CONSERVATION COMMITTEE.

**WATER BARS**



**CONSTRUCTION SPECIFICATIONS**

1. ALL TREES, BRUSH, STUMPS, OBSTRUCTIONS, AND OTHER OBJECTIONABLE MATERIAL SHALL BE REMOVED AND DISPOSED OF SO AS NOT TO INTERFERE WITH THE PROPER FUNCTIONING OF THE WATERWAY.
2. THE WATERWAY SHALL BE EXCAVATED OR SHAPED TO LINE, GRADE, AND CROSS SECTION AS REQUIRED TO MEET THE CRITERIA SPECIFIED HEREIN, AND BE FREE OF BANK PROJECTIONS OR OTHER IRREGULARITIES WHICH WILL IMPED NORMAL FLOW.
3. FILLS SHALL BE COMPACTED AS NEEDED TO PREVENT UNEQUAL SETTLEMENT THAT WOULD CAUSE DAMAGE IN THE COMPLETE WATERWAY.
4. ALL EARTH REMOVED AND NOT NEEDED IN CONSTRUCTION SHALL BE SPREAD OR DISPOSED OF SO THAT IT WILL NOT INTERFERE WITH THE FUNCTIONING OF THE WATERWAY.
5. STABILIZATION SHALL BE DONE ACCORDING TO THE APPROPRIATE STANDARD AND SPECIFICATIONS FOR VEGETATIVE PRACTICES.
  - A. FOR DESIGN VELOCITIES OF LESS THAN 3.5 FT. PER SEC., SEEDING AND MULCHING MAY BE USED FOR THE ESTABLISHMENT OF THE VEGETATION. IT IS RECOMMENDED THAT, WHEN CONDITIONS PERMIT, TEMPORARY WATERWAYS OR OTHER MEANS SHOULD BE USED TO PREVENT WATER FROM ENTERING THE WATERWAY DURING THE ESTABLISHMENT OF THE VEGETATION.
  - B. FOR DESIGN VELOCITIES OF MORE THAN 3.5 FT. PER SEC., THE WATERWAY SHALL BE STABILIZED WITH SOD, WITH SEEDING PROTECTED BY SUE OR EXCELSIOR MATTING OR WITH SEEDING AND MULCHING INCLUDING TEMPORARY DIVERSION OF THE WATER UNTIL THE VEGETATION IS ESTABLISHED.
  - C. STRUCTURAL - VEGETATIVE PROTECTION SUBSURFACE DRAIN FOR BASE FLOW SHALL BE CONSTRUCTED AS SHOWN ON THE STANDARD DRAWING AND AS SPECIFIED IN THE STANDARD AND SPECIFICATIONS FOR SUBSURFACE DRAIN.

ADAPTED FROM DETAILS PROVIDED BY: USDA - NRCS, NEW YORK STATE DEPARTMENT OF TRANSPORTATION, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, NEW YORK STATE SOIL & WATER CONSERVATION COMMITTEE.

**GRASSED WATERWAY**

**SOLAR ARRAY**  
COMPANY, LLC  
24HR EMERGENCY CONTACT  
NAME, PHONE, ADDRESS

**⚠ DANGER**  
**HIGH VOLTAGE.**  
**KEEP OUT**

**SIGNAGE DETAIL**  
NOT TO SCALE

**SIGNAGE NOTE:**

1. SIGNAGE SHALL BE DEPICTED WITH AN AREA NO MORE THAN 8 SQUARE FEET AND MUST HAVE A YELLOW BACKGROUND WITH BLACK LETTERS AND BE LOCATED NEAR PAD MOUNTED TRANSFORMERS/SUBSTATION, ON THE GATE OF THE PERIMETER FENCE, AND ALONG THE PERIMETER FENCE.

7		
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1	CLIENT REVIEW	04/05/2024
Number	Revision Description	Revision Date
Designed By		Date Submitted
Drawn By	HLW	Date Created 03/28/2024
Approved By	MTS	Scale AS NOTED

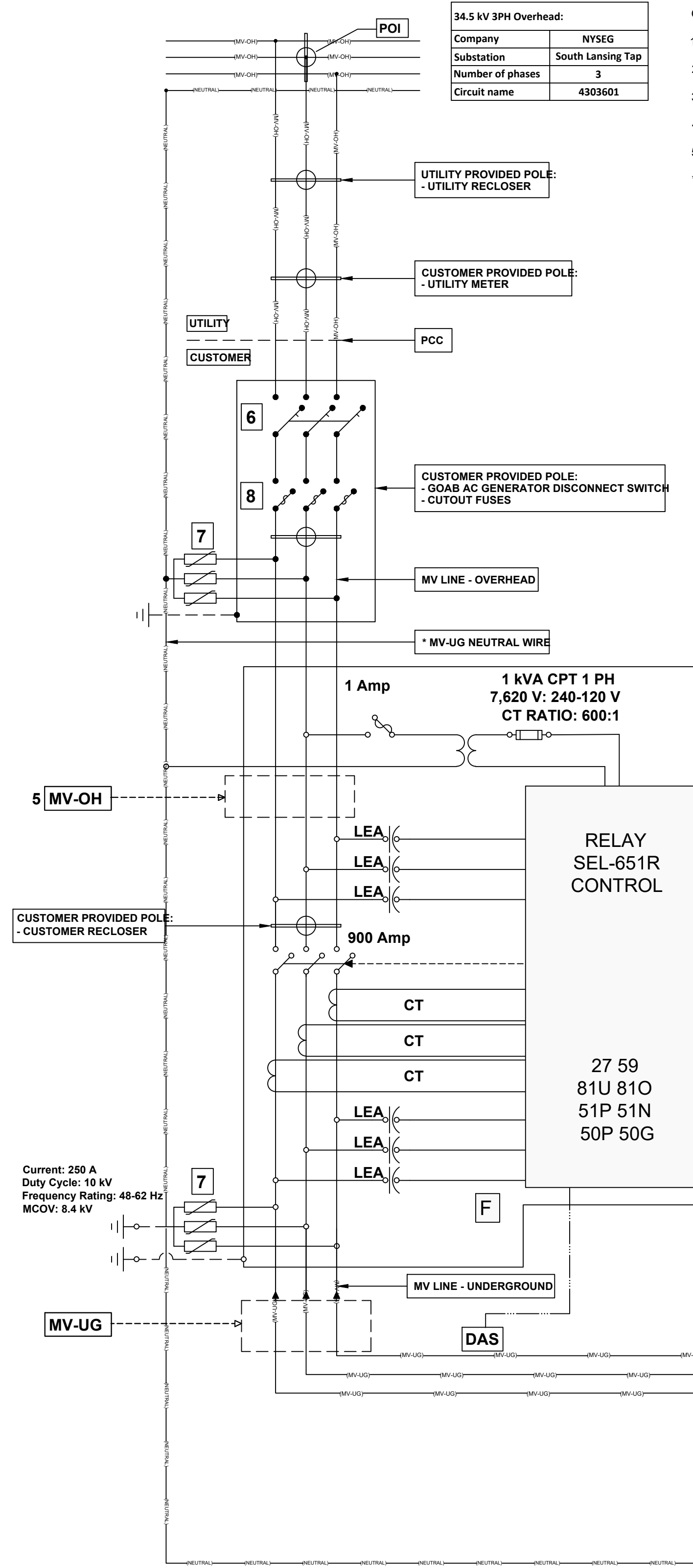
Client:  
**NY LANSING II, LLC**  
 P.O. BOX 384  
 CALLICOON, NY 12783  
 Project:  
**NORTH TRIPHAMMER ROAD**  
**SOLAR FARM CONCEPTUAL**  
**SITE PLAN**  
 Project Address:  
**NORTH TRIPHAMMER ROAD**  
**TOWN OF LANSING**  
**TOMPKINS COUNTY, NEW YORK**

County Tax Map Number: 44-1-1.2 & 44-1-3.3  
 Contact Number: ---  
 Regulatory Reference Number: ---  
 File of Drawing: ---

**EROSION AND SED. CONTROL DETAILS**

Drawing Number:  
**C-601**  
 Sheet 10 of 11  
 PWGC Project Number:  
**DRS2404**



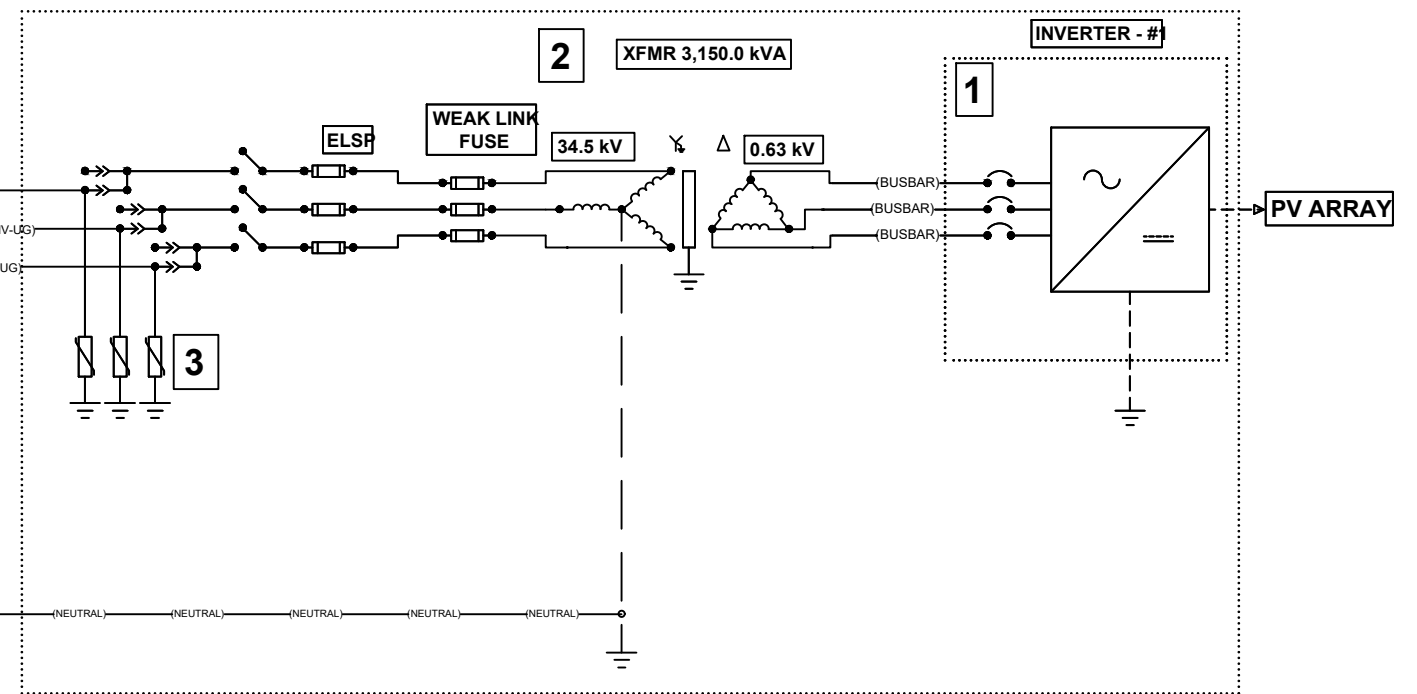


34.5 kV 3PH Overhead:	
Company	NYSEG
Substation	South Lansing Tap
Number of phases	3
Circuit name	4303601

GENERAL NOTES:

1. Only the main equipment manufacturers are indicated.
  2. The inverter power station integrates all the components in a compact outdoor assembly; Pad Mount Transformer and Other Equipment (Monitoring and Auxiliary Equipment).
  3. Ground resistance (Rg) will be at least 25 ohms.
  4. Pad Mount Distribution Transformer provided and installed by Customer. MV Cable, Meter pole, Cutout fuses and Disconnect Switch to be provided and installed by customer.
  5. UTILITY will make the final electrical connection from the CUSTOMER facilities to UTILITY facilities.
- \*This Neutral wire is only representative; the real neutral wire is concentric strands integrated in each phase wire.

INVERTER SETTINGS		
DEVICE	PICKUP	CLEARING TIME (SECONDS)
27-1	528.0 V (88%)	2.00
27-2	300.0 V (50%)	1.10
59-1	660.0 V (110%)	2.00
59-2	720.0 V (120%)	0.16
81U-2	56.6 Hz	0.16
81U-1	58.5 Hz	300.00
81O-1	61.2 Hz	300.00
81O-2	62 Hz	0.16



VOLTAGE LINE (kV)	34.50
UTILITY	NYSEG
SUBSTATION	South Lansing Tap
NUMBER OF PHASES	3
CIRCUIT NAME	4303601
AC SYSTEM SIZE (MW)	3.00
POWER FACTOR	1.00
OUTPUT CURRENT (A)	50.20
AC SYSTEM SIZE (MVA)	3.00
1	
MANUFACTURER	Singrow
MODEL	SG150UD-MV
QUANTITY	1
MAX PV INPUT VOLTAGE (V)	1,500
AC POWER (kVA)	3,150
AC OUTPUT POWER (kW) (LIMITED)	3,000
AC OUTPUT VOLTAGE (V)	630
AC OUTPUT CURRENT (A)	2,886.75
UL 1741 AND IEEE 1547	YES
2	
MANUFACTURER	EATON
QUANTITY	1
POWER (kVA)	3,150
HV BIL (kV)	150
LV BIL (kV)	30
NOMINAL HIGH VOLTAGE (kV)	34.50
NOMINAL LOW VOLTAGE (V)	630
IMPEDANCE (%)	5.75
X/R Ratio	>=5
PRIMARY WINDING	WYE
SECONDARY WINDING	DELTA
3	
MANUFACTURER	EATON
MCOV RATING (kV)	22.00
DUTY CYCLE (kV)	27.00
4	
SIZE	2/D AWG
NORMAL TEMP RATING (°C)	105
JACKET	XLPE
CONCENTRIC NEUTRAL	100%
INSULATION LEVEL (%)	100
VOLTAGE RATING (kV)	35
LENGTH (ft)	2,590.15
5	
TYPE	ACSR
SIZE	1/D AWG
LENGTH (ft)	198.38
6	
MANUFACTURER	EATON
RATING (A)	600
VOLTAGE (kV)	15.5
BIL (kV)	200
7	
MANUFACTURER	EATON
QUANTITY	3
MCOV (kV)	22.00
ARRESTER RATING (kV)	27.00
8	
MANUFACTURER	S&C
RATING (kV)	35
RATING (A)	175
BIL (kV)	200
QUANTITY	3

ELECTRICAL THREE LINE DIAGRAM  
NOT TO SCALE



630 Johnson Avenue - Suite 7  
Bohemia - NY - 11716-2618  
Phone: (631) 589-6353 - Fax: (631) 589-8705  
E-mail: INFO@PWGROSSER.COM

CONSULTANTS

FOR PERMITTING  
PURPOSES ONLY  
NOT FOR CONSTRUCTION

7		
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3		
2		
1	CLIENT REVIEW	04/05/2024
Number	Revision Description	Revision Date

Designed By: \_\_\_\_\_ Date Submitted: \_\_\_\_\_  
 Drawn By: HLW Date Created: 03/28/24  
 Approved By: MTS Scale: AS NOTED

Client:  
**NY LANSING II, LLC**  
 P.O. BOX 384  
 CALLICOON, NY 12783  
 Project:  
**NORTH TRIPHAMMER ROAD  
 SOLAR FARM CONCEPTUAL  
 SITE PLAN**  
 Project Address:  
**NORTH TRIPHAMMER ROAD  
 TOWN OF LANSING  
 TOMPKINS COUNTY, NEW YORK**

County Tax Map Number: 44-1-1.2 & 44-1-3.3  
 Regulatory Reference Number: ---  
 Title of Drawing: ---

ELECTRICAL  
THREE LINE  
DIAGRAM

Drawing Number: **C-602**  
 Sheet 11 of 11  
 Project Number: DRS2404





## APPENDIX A SITE PHOTOGRAPHS

DRAFT





**Photo Log**  
**Unlisted address on N Triphammer Road, Ithica, New York**  
**PWGC Project #DRS2404**



Photo 1- View of subject property from access road along N Triphammer Road.







Photo 2 – West border of the SW Field, view to the north.



Photo 3 – Representative field conditions throughout the property.





Photos 4 & 5 –

Photo 4 - View of drainpipe and stream in the south-central portion of the property.,  
Photo 5 - View of standing water on the southern portion of the property.





Photo 6 - View of the hunting deer stand at west border of the SE portion of the property.



Photo 7 - View of the vegetated area on the east portion of the property.





Photo 8 – View of the central portion of the property.



Photo 9 – View of the solid waste disposal identified in the central portion of the property.





Photo 10 – View of solid waste disposal identified in central portion of the property.



Photo 11 – View of the solid waste disposal identified in the central portion of the property.





Photo 12 – View of the adjacent property to the south improved with one single-family residential dwelling.



Photo 13 – View of residential dwelling north of access road, view to the northwest.





Photo 14- View of N Triphammer road, view to the south.



Photo 15 – View of N Triphammer Road, view to the north.



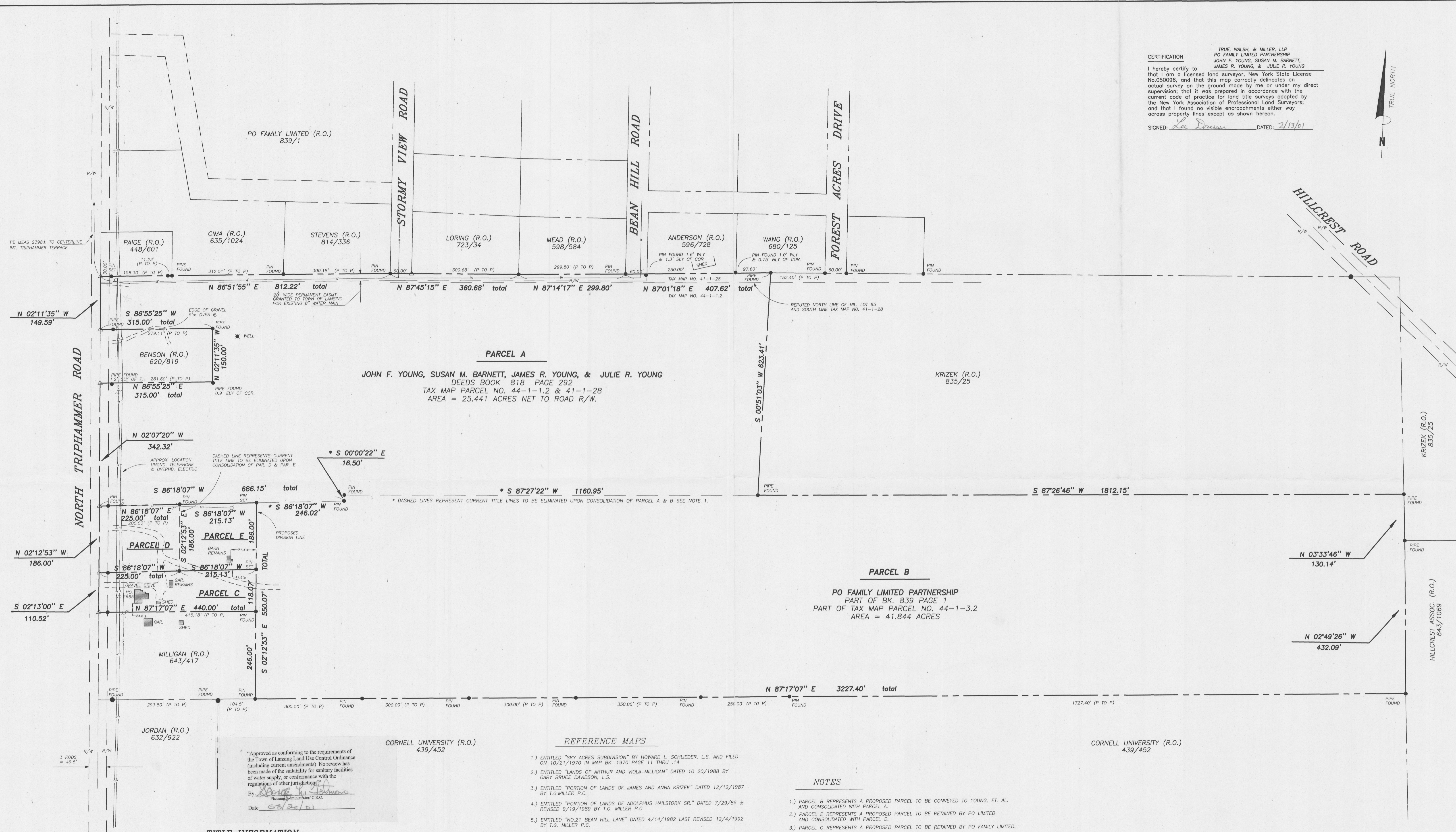
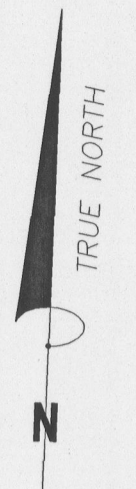
Photo 16 – View of N Triphammer Road and Landscaping Business, view to the west.

DRAFT





CERTIFICATION  
 TRUE, WALSH, & MILLER, LLP  
 PO FAMILY LIMITED PARTNERSHIP  
 JOHN F. YOUNG, SUSAN M. BARNETT,  
 JAMES R. YOUNG, & JULIE R. YOUNG  
 I hereby certify to  
 that I am a licensed land surveyor, New York State License  
 No. 050096, and that this map correctly delineates an  
 actual survey on the ground made by me or under my direct  
 supervision; that it was prepared in accordance with the  
 current code of practice for land title surveys adopted by  
 the New York Association of Professional Land Surveyors;  
 and that I found no visible encroachments either way  
 across property lines except as shown hereon.  
 SIGNED: Lee Dresser DATED: 2/13/01



**TITLE INFORMATION**

<b>PARCEL A</b> JOHN F. YOUNG, SUSAN M. BARNETT, JAMES R. YOUNG, & JULIE R. YOUNG DEEDS BOOK 818 PAGE 292 TAX MAP PARCEL NO. 44-1-1.2 & 41-1-28 AREA = 25.441 ACRES NET TO ROAD R/W.	<b>PARCEL B</b> PO FAMILY LIMITED PARTNERSHIP PART OF BK. 839 PAGE 1 PART OF TAX MAP PARCEL NO. 44-1-3.2 AREA = 41.844 ACRES
<b>PARCEL C</b> PO FAMILY LIMITED PARTNERSHIP PART OF BK. 839 PAGE 1 PART OF TAX MAP PARCEL NO. 44-1-3.2 1.09 ACRES NET TO ROAD R/W.	<b>PARCEL D</b> PO FAMILY LIMITED PARTNERSHIP PART OF BK. 839 PAGE 1 TAX MAP PARCEL NO. 44-1-2 0.855 ACRES NET TO ROAD R/W.
<b>PARCEL E</b> PO FAMILY LIMITED PARTNERSHIP PART OF BK. 839 PAGE 1 PART OF TAX MAP PARCEL NO. 44-1-3.2 AREA = 0.92 ACRES	

- REFERENCE MAPS**
- ENTITLED "SKY ACRES SUBDIVISION" BY HOWARD L. SCHLIEDER, L.S. AND FILED ON 10/21/1970 IN MAP BK. 1970 PAGE 11 THRU 14
  - ENTITLED "LANDS OF ARTHUR AND VIOLA MILLIGAN" DATED 10/20/1988 BY GARY BRUCE DAVIDSON, L.S.
  - ENTITLED "PORTION OF LANDS OF JAMES AND ANNA KRIZEK" DATED 12/12/1987 BY T.G. MILLER P.C.
  - ENTITLED "PORTION OF LANDS OF ADOLPHUS HAILSTORK SR." DATED 7/29/86 & REVISED 9/19/1989 BY T.G. MILLER P.C.
  - ENTITLED "NO. 21 BEAN HILL LANE" DATED 4/14/1982 LAST REVISED 12/4/1992 BY T.G. MILLER P.C.
  - ENTITLED "NO. 2677 NORTH TRIPHAMMER ROAD" DATED 11/26/1990 BY HOWARD R. SCHLIEDER, L.S.
  - ENTITLED "SURVEY FOR ADOLPHUS C. HAILSTORK" DATED 4/23/1940 BY CARL CRANDALL C.E.
- SAID MAPS BEING ON FILE IN THE TOMPKINS COUNTY CLERKS OFFICE.

- NOTES**
- PARCEL B REPRESENTS A PROPOSED PARCEL TO BE CONVEYED TO YOUNG, ET. AL. AND CONSOLIDATED WITH PARCEL A.
  - PARCEL E REPRESENTS A PROPOSED PARCEL TO BE RETAINED BY PO LIMITED AND CONSOLIDATED WITH PARCEL D.
  - PARCEL C REPRESENTS A PROPOSED PARCEL TO BE RETAINED BY PO FAMILY LIMITED.
  - PARCELS A & D REPRESENT EXISTING PARCELS.

"Approved as conforming to the requirements of the Town of Lansing Land Use Control Ordinance (including current amendments) No review has been made of the suitability for sanitary facilities of water supply, or conformance with the regulations of other jurisdictions."  
 By: Lee Dresser  
 Licensed Land Surveyor  
 Date: 2/13/01

DATE: 2/13/2001	JOB No. S01-043	LEE DRESSER, L.S. N.Y.S. LICENSE No. 050096  Lee Dresser SIGNATURE LICENSED LAND SURVEYOR	
SCALE: 1" = 120'	SHEET 1 OF 1		
DRAWN BY: DLD	CHECKED BY: EDR	Warning ALTERATIONS TO THIS MAP NOT CONFORMING TO SECTION 7209, SUBDIVISION 2, NEW YORK STATE EDUCATION LAW, ARE PROHIBITED BY LAW. ALL CERTIFICATIONS HEREON ARE VALID FOR THIS MAP AND COPIES THEREOF ONLY IF SAID MAP OR COPIES BEAR THE IMPRESSION SEAL OF THE LICENSED LAND SURVEYOR WHOSE SIGNATURE APPEARS HEREON.	

DATE	REVISION	BY

**SURVEY MAP**  
 SHOWING LANDS OF  
 PO LIMITED PARTNERSHIP AND YOUNG, ET. AL.  
 NO. 2665 - NO. 2677 NORTH TRIPHAMMER ROAD  
 TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK

**T. G. MILLER P.C.**  
 ENGINEERS AND SURVEYORS  
 203 NORTH AURORA STREET  
 P.O. BOX 777  
 ITHACA, NEW YORK 14851





Draft #: 1 Date: 4/8/2024

Approved Date: \_\_\_\_\_

# Operations & Maintenance Plan

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## North Triphammer Road

### Project #1 and #2

**Project #1 - SBL: #144-1-1.2 5MW Solar Facility**

**Project #2 - SBL#: 44-1-3.3 3MW Solar Facility**

Prepared for:

**Town of Lansing**

**Tompkins County, New York**

Prepared by:  
NY Lansing I, LLC & NY Lansing II, LLC  
P.O. Box 384  
Callicoon NY, 12783



## Content

<b>1. Introduction</b> .....	3
<b>2. General Requirements of the O&amp;M Plan</b> .....	3
<b>3. Solar Facility (Components) Maintenance</b> .....	3
<b>3.1 Scheduled Service Visits: Preventative Maintenance and Inspections</b> .....	3
<b>3.2 Unscheduled Service Visits: Corrective Maintenance and Repairs</b> .....	4
<b>3.3 O&amp;M Contract</b> .....	4
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## 1. Introduction

#1: NY Lansing I, LLC & #2: NY Lansing II, LLC (“Project Owner”), an affiliate of Delaware River Solar, LLC, proposes to build a photovoltaic (PV) solar facility (“Solar Facility”) at North Triphammer Road in the Town of Lansing (“Town”) under New York State’s Community Solar initiative. The Solar Facility is planned to have a nameplate capacity of approximately 5MW ac (MW) from Project #1 and 3MW ac from Project #2, to be constructed on private land (“Project Site”) leased by the Project Owner from the property owner (“Property Owner”).

This Operations and Maintenance Plan (“Plan”) is being submitted to the Town as part of the application with respect to the Town of Lansing Local Law #3 of 2020 802.18 (“Solar Law”). The Solar Facility is considered a Solar Energy Facility as set forth in the Solar Law.

Prior to commercial operation, the Project Owner will enter an Operation and Maintenance Contract (“O&M Contract”) with an operations and maintenance provider(s) (“O&M Contractor”), the scope of which shall include essential works and services needed for the (a) proper operation and maintenance of the Solar Facility and (b) maintenance of the Project Site. The following is a general overview of the O&M Plan to be covered in the O&M Contract.

## 2. General Requirements of the O&M Plan

- All scheduled Solar Facility maintenance and all landscaping and vegetation maintenance will occur during normal business hours (8:00 A.M. and 7:00 P.M. Eastern Standard Time).
- Commercially reasonable efforts will be used to ensure minimal limits of disturbance when performing any maintenance work of the Solar Facility or Project Site.
- The Project Owner will not use herbicides to manage vegetation. In the event the use of herbicides becomes necessary, the Project Owner will provide the Town’s Code Official with the proposed herbicide type, manufacturer and application details for approval before any application is made.
- In the event there is any damage to ground cover, vegetation or vegetative screening due to maintenance activities (other than caused by normal maintenance activities), the affected areas and vegetation will be repaired.
- Corrective maintenance of the Solar Facility may require specialists outside the abilities and responsibility of the Project Owner.

## 3. Solar Facility (Components) Maintenance

### 3.1 Scheduled Service Visits: Preventative Maintenance and Inspections

- Semi-Annual interim maintenance visit
- Annual full maintenance visit
- System testing and verification of data acquisition systems, at least once per calendar year
- Module cleaning once a year, or as determined by Project Owner
- Solar Facility field inspection: visual, electrical and mechanical once per month, or as determined by Project Owner
- Data acquisition system maintenance as needed
- Inverter cleaning and servicing to ensure proper operation. Scheduled maintenance and testing as required to maintain manufacturer’s warranties.
- Scheduled maintenance and testing required to maintain all manufacturers’ warranties on Solar Facility components.



### 3.2 **Unscheduled Service Visits: Corrective Maintenance and Repairs**

Unscheduled maintenance visits will generally occur during “Emergency Situations” that would endanger the health and/or safety of surrounding area or “Major Disruptions” to the Solar Facility that degrades electricity generation that does not create an Emergency Situation, such as failure of Solar Facility components, vandalism, or fallen trees.

In the event of an Emergency Situation, the O&M Contractor and/or the Project Owner will contact the appropriate personnel (fire department, police department) to inform them of the emergency. The O&M Contractor will then dispatch appropriate personnel to the Project Site as soon as possible.

In the event of a Major Disruption to the Solar Facility, the O&M Contractor will schedule a corrective maintenance visit as soon as possible with all reasonable effort to schedule any such maintenance activities between 8:00 A.M and 7:00 P.M.

### 3.3 **O&M Contract**

The scope of the O&M Contract shall include essential works and services needed for the proper operation and maintenance of the Solar Facility. The scope of work shall generally include at least, but not limited to, the following items:

- Compliance with the Local, State and Federal Rules, Codes, Regulations and Laws regarding the health and safety of any operation and maintenance works.
- Performance of a preventive and corrective maintenance plan.
- Control and monitoring of the Solar Facility 24/365, including, CCTV alarms and system failures, and coordination with the local fire department and law enforcement.
- Maintain and operate all the infrastructures, equipment and facilities related to the Solar Facility required for the proper operation.
- Provide reports to Project Owner (monthly and yearly) of any major unexpected event.
- Administer and manage supplier's guarantees and warranties.
- Management the paperwork involved with third party site visits such as insurance, governmental agencies and others related.
- On site annual peak power and degradation performance testing of modules to a representative sample of modules.
- Annual IR thermography field test of modules and connections of the electrical panels. The test will be done in the appropriate weather conditions taking into account that the main purpose is to detect hot spot events.
- Spare parts stock management, including all cost associated like insurance, security or transportation.

### 3.4 **Preventative and Corrective Maintenance Plan**

The O&M Contractor shall comply with the preventive and corrective maintenance programs to maintain and operate the Solar Facility in the proper way. These actions shall include:

- Inspect, test, and clean equipment, including a periodically cleaning of the modules.
- Replace all spare parts, supplies and consumables necessary for performance of the O&M Contract according to the Preventive and Corrective Maintenance Program and the manufacturer's user manual.
- Perform annual field tests and fix any potential failures that arise due to the test.
- Provide Project Owner a monthly report including at least the following information: energy estimate, energy production, % of availability, weather station information, preventive maintenance services performed, corrective maintenance services performed including spare parts and consumables used. Monthly report should also include a detailed description of:

1. Any material failure covered by any warranties, action plan and expected timeframe to cover the incident.
  2. Any violation of any applicable law, applicable permit or prudent industry practice due to the O&M practices, including environmental laws, rules, or regulations enforced by governmental agencies.
  3. Any adverse events or conditions that may affect normal Solar Facility operation.
  4. Record of all tests and reviews performed to maintain systems in compliance with the manufacturer user manual, including name of company involved and nature of service.
- Guaranties and warranties of the manufacturers that arise, including without limitation any claims or remedies against any subcontractors or suppliers; and
  - Comply with all permits and maintain in effect all permits required for operation and maintenance of the Solar Facility.

#### **4. General Project Site Maintenance**

Frequency of site visits shall be determined based on season (more in summer, less in winter), but no less than quarterly to monitor vegetation. Any required corrective actions will be taken as soon as practical or warranted by the circumstances.

- Visually inspect and report on all fencing for signs of damage, intrusion, and overgrowth of vegetation.
- Inspect signage to ensure all originally installed signs are present and legible.
- Maintenance of access road, including snow removal as needed.
- Vegetation may need to be trimmed or cut back to avoid shading of the solar arrays. Shading inspections will be done semi-annually, and trimming will occur as needed. This would include ground cover, existing vegetation, and screening vegetation. Ground cover will be either mowed, as needed, or sheep may be utilized to graze the array area.
- Adherence to any Storm Water Pollution Prevention Plan practices, if any.

#### **5. Summary**

This O&M Plan has been submitted as part of the Site Plan review and Special Condition for a Solar Energy Facility as set forth in Local Law #3 of 2020; Section 802.18.

The Solar Facility is considered a Solar Energy Facility as defined in the Solar Law. The Project Owner will enter into an O&M Contract prior to commercial operation of the Solar Facility with an O&M Contractor taking into consideration any conditions of Local Law #3 of 2020; Section 802.18.





Draft #:   1   Date:   4/8/2024  

Approved Date: \_\_\_\_\_

# Decommissioning Plan

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## North Triphammer Road

### Project #1 and #2

**Project #1 - SBL: #144-1-1.2 5MW Solar Facility**

**Project #2 - SBL#: 44-1-3.3 3MW Solar Facility**

Prepared for:

**Town of Lansing**

**Tompkins County, New York**

Prepared by:

NY Lansing I, LLC & NY Lansing II, LLC

P.O. Box 384

Callicoon NY, 12783

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**1. Introduction**

#1: NY Lansing I, LLC & #2: NY Lansing II, LLC (“Project Owner”), an affiliate of Delaware River Solar, LLC, proposes to build a photovoltaic (PV) solar facility (“Solar Facility”) at North Triphammer Road in the Town of Lansing (“Town”) under New York State’s Community Solar initiative. The Solar Facility is planned to have a nameplate capacity of approximately 5MW ac (MW) from Project #1 and 3MW ac from Project #2, to be constructed on private land (“Project Site”) leased by the Project Owner from the property owner (“Property Owner”).

This Decommissioning Plan (“Plan”) is being submitted to the Town as part of the application with respect to Town of Lansing Local Law #3 of 2020 Section 802.18 (“Solar Law”). The Solar Facility is considered a Solar Energy Facility as set forth in the Solar Law. The decommissioning requirement of the Solar Law reads as follows:

The decommissioning requirement for a Solar Facility set forth in §802.18.14 of the Solar Law read as follows:

*“802.18.14 Abandonment and Decommissioning. A Decommissioning Plan shall be submitted with each Application in accordance with § 802.21 of this Chapter. Approval of the Decommissioning Plan by the Town Planning Board shall be required, including under Site Plan review. Removal of Solar Energy Facilities must be completed in accordance with the Decommissioning Plan. If the Solar Energy Facility is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and impose a lien on the property to cover these costs to the municipality.*

**802.21.1** *A Decommissioning Plan shall, at a minimum, contain the following elements and meet the following requirements.*

- i. Specify when and what constitutes an event requiring decommissioning, including abandonment of the facility. In all cases the lack of production for 6 months (or for 12 of any 18 months) and the violation of any site plan conditions, the lack of a current permit or violation of permit conditions, including but not limited to maintenance of any required decommissioning bond or security, shall be an event requiring decommissioning.*
- ii. Specify the form and type of notice required to the Town in the event of any decommissioning, sale, transfer, partial transfer, assignment, or occurrence of any event which may result in an act or partial order requiring partial or complete decommissioning of the site.*
- iii. The means and methods by which utility interconnections will be removed and permitted by the utility provider, as well as all electrical and other safety precautions undertaken during removal.*
- iv. All decommissioning and restoration activities shall be completed within 150 days of the date decommissioning was ordered or required, including under the plan.*
- v. Demonstrate the removal of all Solar Panels, Battery Energy Storage Systems, wind turbines, electrical appurtenances, Towers, structures, equipment, security*

*barriers and transmission lines.*

- vi. Demonstrate the minimization of disruption to field drains and soils, and the remediation of drains and soils, including stabilization and revegetation of any sites or disturbances, including as minimize erosion. Decompaction of soils to 18 inches and removal of any installed materials to 4 feet is required. The Planning Board may allow the owner or operator to leave landscaping or designated belowgrade foundations in place to minimize erosion and disruption to vegetation in a proper case, but generally all of the New York Department of Agriculture and Markets' Guidelines for Agricultural Mitigation for Wind Power Projects or Solar Energy Projects, as applicable, shall be adhered to in any plan.*
- vii. Specify disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations, including the removal of any damaged or contaminated soils. No designation of any facilities by a 'beneficial use declaration' shall be permitted to vary this clean-up and remediation/ disposal rule.*
- viii. Include an expected timeline for execution, together with a cost estimate detailing the projected cost of executing the Decommissioning Plan, duly prepared and sealed by a Professional Engineer. Cost estimations must take inflation into account over the expected life of project, and have a mechanism to ensure the periodic updating and securitization of decommissioning costs."*

This Plan provides an overview of activities that will occur during the decommissioning phase of the Solar Facility, including activities related to the restoration of land, management of materials and waste, and responsibility of removal.

The Solar Facility is expected to have a useful life of thirty (30) years.

This Plan assumes the Solar Facility will be dismantled, and the Project Site restored to a state similar to its pre-construction condition, at the thirty (30) year anniversary of the Solar Facility's commercial operation date ("Expected Decommissioning Date"). This Plan also covers the case of the abandonment of the Solar Facility, for any reason, prior to the Expected Decommissioning Date.

Decommissioning of the Solar Facility will include the disconnection of the Solar Facility from the utility electrical grid and the removal of all Solar Facility components, including:

- Photovoltaic (PV) modules, module racking and supports
- Inverter units, substation, transformers, and other electrical equipment, including wiring cables
- Access roads and perimeter fence
- Inverter pad concrete foundations.

This Plan is based on current best management practices and procedures. This Plan may be subject to revision based on new standards and emergent best management practices at the time of decommissioning. Permits will be obtained as required and notification will be given to stakeholders prior to decommissioning.



**2. The Proponent**

The Project Owner will manage and coordinate the decommissioning process. The Project Owner will obtain all necessary regulatory approvals that may vary depending on the jurisdiction, project capacity, and site location. The Project Owner will be committed to the safety, health, and welfare of the hosting community.

The conditions and obligations of this Plan shall be bound upon the Project Owner, it heirs, executors, administrators, successors or assigns.

Contact information for the proponent is as follows through the permitting process. An agent of the project company will be identified prior to construction of the Solar Facility:

**Company:** NY Lansing I, LLC & NY Lansing II, LLC  
**Contact:** Mollie Messenger  
**Address:** PO Box 384 Callicoon, NY 12723  
**Telephone:** 845-800-8914  
**Email:** mollie.messenger@delawareriversolar.com

**2.1 Project Information**

**Address:** North Triphammer Road, Lansing  
**Tax ID:** Project #1 - SBL: #144-1-1.2 Project #2 - SBL#: 44-1-3.3  
**Project Size:** Project #1 - 5MW ac and Project #2 – 3MW ac  
**Property Owner:** John, James, Julie Young & Susan Barnett  
**Site Agreement:** Contract of Sale for Delaware River Solar Real Estate, LLC to acquire the site

**3. Decommissioning of the Solar Facility**

At the time of decommissioning, the installed components will be removed, reused, disposed of, and recycled, where possible. All removal of equipment will be done in accordance with any applicable laws and regulations, including without limitation, the local laws of the Town applicable to solar energy systems, and manufacturer recommendations. All applicable permits will be acquired.

The decommissioning process of the Solar Facility may commence for the following reasons:

- (a) Project Owner provides written notice to the Town of its intent to retire or decommission the Project (“Owner Decommissioning Notice”) for any reason, including the Solar Facility is damaged and will not be repaired or replaced,
- (b) the Solar Facility ceases to be operational for more than twelve (12) consecutive months, or
- (c) the expiration of the lease agreement with the Property Owner. In event the Project Owner fails to decommission the Solar Facility within three hundred sixty (360) days after providing Owner Decommissioning Notice or fails to respond with a reasonable explanation for cessation of operation of the Project within 60 days of the Town Decommissioning Notice, the Town may commence the decommissioning of the Project. The Town shall provide Project Owner sixty (60) days written notice

(“Town Decommissioning Notice”) prior to the commencement of any decommissioning of the Solar Facility by the Town. For the purposes of this Agreement, “ceases to be operational” shall mean no generation of electricity, other than due to repairs to the Project or causes beyond the reasonable control of the Project Owner.

**4.1 Equipment Dismantling and Removal**

Generally, decommissioning of a Solar Facility proceeds in the reverse order of the installation.

1. The Solar Facility shall be disconnected from the utility power grid.
2. PV modules shall be disconnected, collected, and disposed at an approved solar module recycler or reused / resold on the market.
3. All aboveground and underground electrical interconnection and distribution cables shall be removed and disposed off-site at an approved facility.
4. Galvanized steel PV module support and racking system support posts shall be removed and disposed off-site at an approved facility.
5. Electrical and electronic devices, including transformers and inverters shall be removed and disposed off-site by at approved facility.
6. Concrete foundations shall be removed and disposed off-site at an approved facility.
7. Fencing shall be removed and will be disposed off-site by at approved facility.

**4.2 Environmental Effects**

Decommissioning activities, particularly the removal of project components, could result in environmental effects similar to those of the construction phase. For example, there is the potential for disturbance (erosion/sedimentation) to adjacent watercourses or significant natural features. Mitigation measures similar to those employed during the construction phase of the Solar Facility will be implemented. These will remain in place until the site is stabilized to mitigate erosion and silt/sediment runoff and any impacts on the significant natural features or water bodies, if any, located adjacent to the Project Site.

Road traffic will temporarily increase due to the movement of decommissioning crews and equipment. There may be an increase in particulate matter (dust) in adjacent areas during the decommissioning phase. Decommissioning activities may lead to temporary elevated noise levels from machinery and an increase in trips to the Project Site. Work will be undertaken during daylight hours and conform to any applicable restrictions.

**4.3 Site Restoration**

Through the decommissioning phase, the Project Site will be restored to as natural a condition as possible within one year of removal and as close to its original state as reasonably possible. All project components (see Appendix 1) will be removed. Rehabilitated lands will be seeded with a low-growing species to help stabilize soil conditions, enhance soil structure, and increase soil fertility. After decommissioning, the Project Site will be primarily meadows with soil conditions in an improved state for agricultural use by allowing the land time to fallow over the life of the Project.



**4.4 Managing Materials and Waste**

During the decommissioning phase a variety of excess materials and wastes (see listed in Appendix 1) will be generated. Most of the materials used in a Solar Facility are reusable or recyclable and some equipment may have manufacturer take-back and recycling requirements. Any remaining materials will be removed and disposed of off-site at an approved facility. The Project Owner will establish policies and procedures to maximize recycling and reuse and will work with manufacturers, local subcontractors, and waste firms to segregate material to be disposed of, recycled, or reused.

The Project Owner will be responsible for the logistics of collecting and disposing or recycling the PV modules. Currently, some manufacturers and new companies are looking for ways to recycle and/or reuse solar modules when they have reached the end of their lifespan. Due to a recent increase in the use of solar energy technology, a large number of panels from a variety of projects will be nearing the end of their lifespan in 25-30 years. It is anticipated there will be more recycling options available for solar modules at that time. The Project Owner will dispose of the solar modules using best management practices at the time of decommissioning.

**4.5 Decommissioning During Construction or Abandonment Before Maturity**

In case of abandonment of the Solar Facility during construction or prior to the Expected Decommissioning Date, the same decommissioning procedures as for decommissioning after ceasing operation will be undertaken and the same decommissioning and restoration program will be honored. The Solar Facility will be dismantled, materials removed and disposed, the soil that was removed will be graded and the site restored to a state similar to its preconstruction condition.

**4.6 Decommissioning Notification**

Decommissioning activities may require the notification of stakeholders given the nature of the works at the Project Site. The local municipality will be notified prior to commencement of any decommissioning activities. Prior to decommissioning, Project Owner will update their list of stakeholders and notify appropriate municipalities of decommissioning activities. Federal, county, and local authorities will be notified as needed to discuss the potential approvals required to engage in decommissioning activities.

**4.7 Approvals**

Well-planned and well-managed renewable energy facilities are not expected to pose environmental risks at the time of decommissioning. Decommissioning of the Solar Facility will follow standards of the day. Project Owner will ensure that any required permits are obtained prior to decommissioning.

This Decommissioning Plan may be updated as necessary in the future to ensure that changes in technology and site restoration methods are taken into consideration.

**5. Cost of Decommissioning and Responsibility of Removal**

The current estimated costs indicated on Appendix 2 are the costs, that the contractor anticipates to install and commission the Solar Facility. During the Special Permit review process, the Project Owner will revise the estimated costs to the extent any site plan changes are made.

While the salvage value of valuable recyclable materials (aluminum, steel, etc.) is not factored into the decommissioning costs, the salvage value of such materials (determined on market rates at the time of salvage) is expected to be an amount that could substantially cover the estimated decommissioning cost.

**APPENDIX I**

**Management of Excess Materials and Waste**

Material / Waste	Means of Managing Excess Materials and Waste
PV Modules	If there is no possibility for reuse, the panels will either be returned to the manufacturer for appropriate disposal or will be transported to a recycling facility where the glass, metal and semiconductor materials will be separated and recycled.
Metal array mounting racks and steel supports	These materials will be disposed off-site at an approved facility.
Transformers and substation components	The small amount of oil from the transformers will be removed on-site to reduce the potential for spills and will be transported to an approved facility for disposal. The substation transformer and step-up transformers in the inverter units will be transported off-site to be sent back to the manufacturer, recycled, reused, or safely disposed off-site in accordance with current standards and best practices.
Inverters, fans, fixtures	The metal components of the inverters, fans and fixtures will be disposed of or recycled, where possible. Remaining components will be disposed of in accordance with the standards of the day.
Gravel (or other granular)	It is possible that the municipality may accept uncontaminated material without processing for use on local roads, however, for the purpose of this report it is assumed that the material will be removed from the project location by truck to a location where the materials can be processed for salvage. It is not expected that any such material will be contaminated.
Geotextile fabric	It is assumed that during excavation of the components, a large portion of the geotextile will be “picked up” and sorted at the reprocessing site. Geotextile fabric that is remaining or large pieces that can be readily removed from the excavated aggregate will be disposed of off-site at an approved disposal facility.
Concrete inverter/transformer Foundations	Concrete foundations will be broken down and transported by a certified and licensed contractor to a recycling or approved disposal facility.
Cables and wiring	The electrical line that connects the utility electrical grid to the point of common coupling will be disconnected and disposed of at an approved facility. Support poles, if made of untreated wood, will be chipped for reuse. Associated electronic equipment (isolation switches, fuses, metering) will be transported off-site to be sent back to the manufacturer, recycled, reused, or safely disposed off-site in accordance with current standards and best practices.
Fencing	Fencing will be removed and recycled at a metal recycling facility.
Debris	Any remaining debris on the site will be separated into recyclables/residual wastes and will be transported from the site and managed as appropriate.



**APPENDIX 2**

**Estimated Decommissioning Costs <sup>(1)</sup> Project #1 5MW ac**

<b>Tasks</b>	<b>Estimated Cost (\$)<sup>(1)</sup></b>
Remove Panels	\$6,500
Remove Racking Wiring	\$6,000
Dismantle Racks	\$30,000
Remove and Load Electrical Equipment	\$4,000
Break up Concrete Pads	\$4,000
Remove Racks	\$20,000
Remove Cable	\$14,000
Remove Ground Screws and Power Poles	\$34,000
Remove Fence	\$10,000
Grading	\$7,500
Seed Disturbed Areas	\$2,000
Truck to Recycling Center	\$7,000
Administration	\$5,000
Decommissioning Cost – Current	\$150,000

(1) Does NOT include salvage value.

**Estimated Decommissioning Costs <sup>(1)</sup> Project #2 3MW ac**

<b>Tasks</b>	<b>Estimated Cost (\$)<sup>(1)</sup></b>
Remove Panels	\$3,900
Remove Racking Wiring	\$3,600
Dismantle Racks	\$18,000
Remove and Load Electrical Equipment	\$2,400
Break up Concrete Pads	\$2,400
Remove Racks	\$12,000
Remove Cable	\$8,400
Remove Ground Screws and Power Poles	\$20,400
Remove Fence	\$6,000
Grading	\$4,500
Seed Disturbed Areas	\$1,200
Truck to Recycling Center	\$4,200
Administration	\$3,000
Decommissioning Cost – Current	\$90,000

**Total Estimated Decommissioning Costs <sup>(1)</sup> Project #1 and #2**

<b>Tasks</b>	<b>Estimated Cost (\$) <sup>(1)</sup></b>
Remove Panels	\$10,400
Remove Racking Wiring	\$9,600
Dismantle Racks	\$48,000
Remove and Load Electrical Equipment	\$6,400
Break up Concrete Pads	\$6,400
Remove Racks	\$32,000
Remove Cable	\$22,400
Remove Ground Screws and Power Poles	\$54,400
Remove Fence	\$16,000
Grading	\$12,000
Seed Disturbed Areas	\$3,200
Truck to Recycling Center	\$11,200
Administration	\$8,000
Decommissioning Cost – Current	\$240,000





# Tompkins County Clerk Recording Page

### Return To

DELAWARE RIVER SOLAR, LLC  
140 EAST 45TH STREET  
NEW YORK, NY 10017

### **Maureen Reynolds, County Clerk**

Tompkins County Clerk  
320 North Tioga Street  
Ithaca, NY 14850  
(607) 274-5431

Document Type: **LEASE**

<b>Grantor (Party 1)</b>
YOUNG, JOHN F

<b>Fees</b>	
Recording Fee	\$20.00
TP-584 Form Fee	\$5.00
Pages Fee	\$30.00
State Surcharge	\$20.00
<b>Total Fees Paid:</b>	<b>\$75.00</b>

Receipt Number: 24-397346

<b>Grantee (Party 2)</b>
MONGAUP RIVER SOLAR LLC

Transfer Amt: \$0.00
----------------------

Instrument #: 2024-01909
Transfer Tax #: 001199

Property located in **Lansing**

State of New York  
County of Tompkins

Recorded on February 29th, 2024 at 3:06:09  
PM with a total page count of **6**.

**Tompkins County Clerk**

*This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York*

## MEMORANDUM OF LEASE

Section: 44  
Block: 1  
Lot: 1.2 & 3.3

This is a Memorandum of Lease ("Memorandum") made and entered into as of this 26 day of February, 2024, by and between John F. Young, Susan M. Barnett, James R. Young, and Julie R. Young (hereinafter "Lessor"), with an address at 3105 N Triphammer Rd Suite 1 Lansing, NY 14882 and **MONGAUP RIVER SOLAR, LLC**, a New York limited liability company (hereinafter "Lessee"), with an office at 140 East 45 Street, Suite 32B-1, New York, New York 10017, upon the following terms:

1. **Lease.** The provisions set forth in a written lease between the parties hereto dated 2/26/24 the "Lease"), are hereby incorporated by reference into this Memorandum.

2. **Demised Premises.** The Demised Premises which are the subject of the Lease are a portion of the property located at North Triphammer Road, Lansing, NY 14882 and being more particularly described as follows: **See Attached Exhibit "A"**

3. **Commencement Date of Lease.** The Lease shall be deemed to have commenced on Feb. 26, 2024 ("Effective Date") as set forth within the terms of the Lease.

4. **Term.** The term of the Lease ("Term") commenced on the Effective Date of the Lease and ends on the thirty (30) year anniversary of the Commercial Operation Date (as described in the Lease) of the solar facility to be constructed by Lessee on the Demised Premises ("System"). Lessee shall have the right, at its election, to extend the Term of the Lease by two (2) extension periods of five (5) years each or in any other such manner as prescribed in the Lease.

5. **Successor and Assigns.** The Lease Agreement provides that the provisions of the Lease Agreement run with the land and are binding upon and inure to the benefit of the successors and assigns of each party.

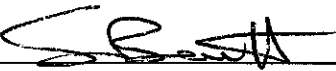
6. **Purpose.** It is expressly understood and agreed by all parties that the sole purpose of this Memorandum of Lease is to give record notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between Lessor and Lessee with respect to the Demised Premises and is hereby incorporated by reference. The Lease contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which govern the Lease. This Memorandum is for information purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall control.

7. **Counterparts.** Counterpart originals may be assembled in order to make one complete copy of this Memorandum and all such counterpart originals, when taken together, shall comprise but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease pursuant to due authorization on the dates herein acknowledged.



LESSOR:



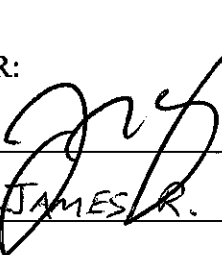
Name: SUSAN M. BARNETT

LESSOR:



Name: JOHN F. YOUNG

LESSOR:



Name: JAMES R. YOUNG

LESSOR:



Name: JULIE R. YOUNG

LESSEE:

Mongaup River Solar, LLC

By: 

Name: PETER DOLGOS

Title: SVP

STATE OF NEW YORK :  
: ss.:  
COUNTY OF TOMPKINS :

On the 12<sup>th</sup> day of February, 2024 before me, the undersigned, personally appeared JOHN F. YOUNG, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

Angela P. Zhe  
Notary Public

**ANGELA P. ZHE**  
Notary Public, State of New York  
No. 01ZH6168176  
Qualified in Tompkins County  
My Commission Expires June 11, 2027

STATE OF NEW YORK :  
: ss.:  
COUNTY OF TOMPKINS :

On the 12<sup>th</sup> day of February, 2024 before me, the undersigned, personally appeared SUSAN M. BARNETT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

Angela P. Zhe  
Notary Public

**ANGELA P. ZHE**  
Notary Public, State of New York  
No. 01ZH6168176  
Qualified in Tompkins County  
My Commission Expires June 11, 2027

COMMONWEALTH OF PENNSYLVANIA :  
: ss.:  
COUNTY OF McKEAN :

On the 5 day of February, 2024 before me, the undersigned, personally appeared JAMES R. YOUNG and JULIE R. YOUNG, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

Melissa Jo Smith  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
Melissa Jo Smith, Notary Public  
McKean County  
My commission expires March 22, 2025  
Commission number 1155487  
Member, Pennsylvania Association of Notaries



Section 3, Item d.

STATE OF NEW YORK :  
COUNTY OF NEW YORK : ss.:

On the 26 day of February, 2024 before me, the undersigned, personally appeared Peter Aulisio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

[Signature] 02/26/24  
Notary Public

GARRETT CHRISTOPHER HERMANN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01HE6437332  
Qualified in Kings County  
My Commission Expires 08-01-2026

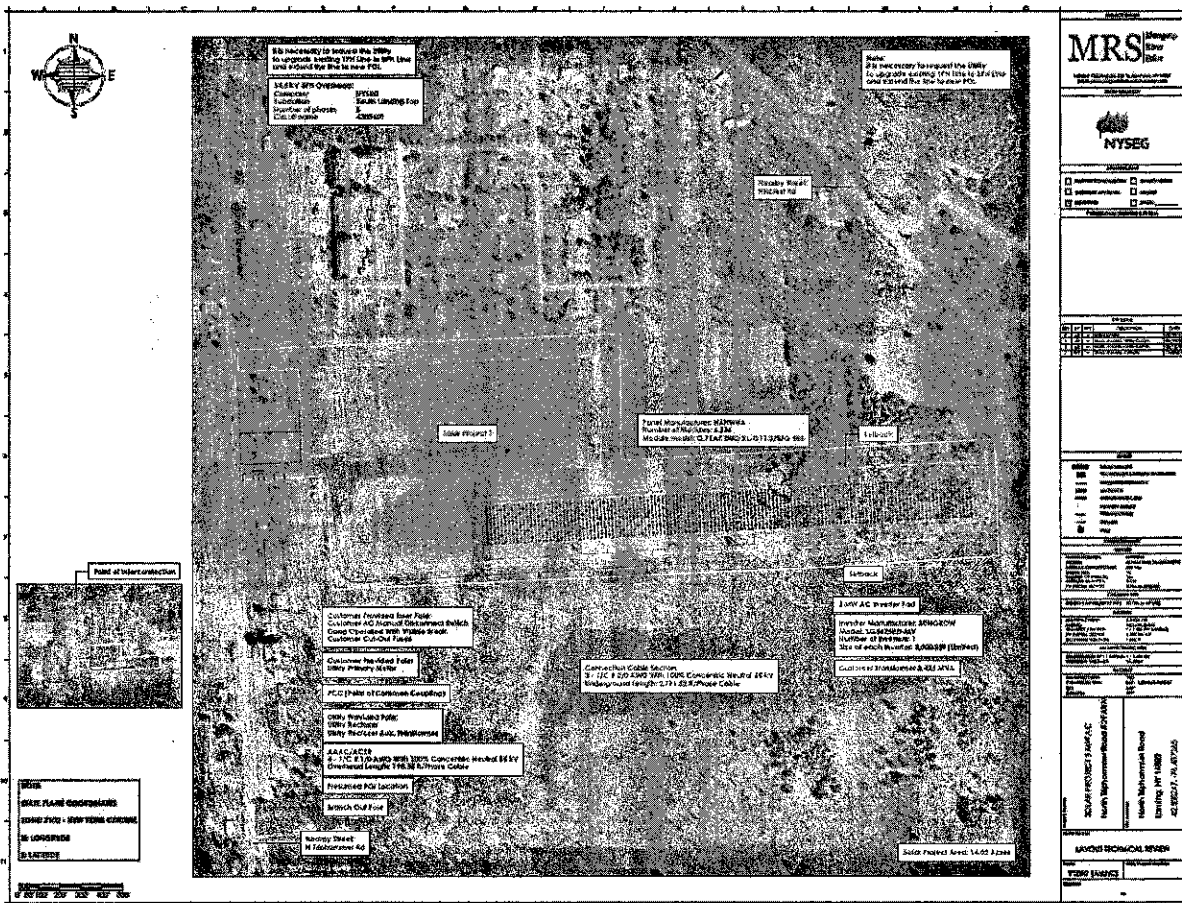
**Record and Return to:**  
**Mongaup River Solar, LLC**  
**140 East 45th Street, Suite 32B-1**  
**New York, NY 10017**

### EXHIBIT "A" Description of Demised Premises

All that tract or parcel of land situate in the Town of Lansing, County of Tompkins and State of New York, being approximately 67 acres of the Property, as depicted in the site plan below, to be replaced by a legal description upon completion of a survey.

Notwithstanding anything to the contrary herein, the final Premises will not include any of the Property highlighted in "/////" being 300 feet along North Triphammer Road immediately South of Tax Parcel 44.1-1-1.1 and being a depth of approximately 290 feet.

[map of site plan]





# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Title No: WTA-23-012836

NY Title Ins. Lic. No.: TLA-1353623

## Commitment for Title Insurance

Issued By



755 Jefferson Road – Suite 300

Rochester, NY 14623

Phone: (888) 250-9056 / (585) 454-4770

Fax: (888) 250-9057 / (585) 454-4943

[www.webtitle.us](http://www.webtitle.us)

A handwritten signature in black ink that reads "John V. Villani".

By: \_\_\_\_\_

**John V. Villani, Esq.**  
**Title Counsel**

**THIS REPORT IS NOT A TITLE INSURANCE POLICY!**

**PLEASE READ IT CAREFULLY. THE REPORT MAY SET FORTH EXCLUSIONS UNDER THE TITLE INSURANCE POLICY AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE PROPERTY.**

**YOU SHOULD CONSIDER THIS INFORMATION CAREFULLY.**

**Title No: WTA-23-012836**

**AGREEMENT TO ISSUE POLICY**

WebTitle Agency (“Company”), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the Land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 180 days after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

Special Note: Please be advised that WebTitle Agency, as authorized issuing agent, utilizes title insurance rate calculators available to the general public on the internet free of charge. Please feel free to contact WebTitle Agency for a list of these website addresses.



**FIDELITY NATIONAL TITLE INSURANCE COMPANY**

Title No: WTA-23-012836

**CONDITIONS**

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000.00 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.

You may review a copy of the arbitration rules at: <http://www.alta.org/>.

Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE A

1. Commitment Effective Date: **November 6, 2023**
2. Date of issuance: **December 22, 2023**
3. Policy (or Policies) to be issued and Proposed Insured:

Owners Policy with Leasehold Endorsement ALTA OWNERS (6-17-06):

Proposed Insured: **NY Lansing II, LLC**  
Policy Amount: **\$116,808.41**

THIS COMMITMENT IS FURNISHED BY WEBTITLE AGENCY AS AUTHORIZED ISSUING AGENT SOLELY FOR THE ISSUANCE OF A POLICY OR POLICIES OF TITLE INSURANCE. THIS COMMITMENT IS NOT AN ABSTRACT OR AN OPINION OF TITLE. LIABILITY UNDER THIS COMMITMENT IS DEFINED BY AND LIMITED TO THE TERMS AND CONDITIONS OF THIS COMMITMENT AND THE TITLE INSURANCE POLICY TO BE ISSUED. PERSONS AND ENTITIES NOT LISTED ABOVE AS PROPOSED INSURED ARE NOT ENTITLED TO RELY UPON THIS COMMITMENT FOR ANY PURPOSE.

4. The estate or interest in the land described or referred to in this Commitment is **Leasehold**.
5. THIS COMPANY CERTIFIES that a good and marketable title to the premises described in Schedule A, subject to the liens, encumbrances and other matters, if any, set forth in this certificate may be conveyed and/or mortgaged by:

### Parcel A – North Triphammer Road

**John F. Young, Susan M. Barnett, James R. Young and Julie R. Young**

Source of Title: Quit Claim Deed dated May 5, 1998 by and between County of Tompkins, Grantor, and John F. Young, Susan M. Barnett, James R. Young and Julie R. Young, Grantee, and recorded on May 11, 1998 in Liber 818, Page 292.

*Note: Above Deed also conveys Tax Lot 41.-1-28, which is not certified herein.*

### Parcel B – North Triphammer Road

**John F. Young and Susan M. Barnett, husband and wife, as tenants by the entirety as to an undivided one-half interest, and James R. Young and Julie R. Young, husband and wife, as tenants by the entirety as to the remaining undivided one-half interest**

Source of Title: Warranty Deed dated March 30, 2001 by and between Po Family Limited Partnership, Grantor, and John F. Young and Susan M. Barnett, husband and wife, as tenants by the entirety as to an undivided one-half interest, and James R. Young and Julie R. Young, husband and wife, as tenants by the entirety as to the remaining undivided one-half interest, Grantee, and recorded on March 30, 2001 in Liber 900, Page 17.



Title No: WTA-23-012836

**COMMITMENT FOR TITLE INSURANCE  
SCHEDULE A**

6. The land referred to in this Commitment is described as follows:

**SEE SCHEDULE "A" CONTINUED ATTACHED HERETO AND MADE A PART HEREOF**

7. The land referred to in this Commitment is situated in the State of New York and is identified as follows:

**Parcel A**

Property Address: North Triphammer Road, Lansing, NY 14882 (Town of Lansing)  
County: Tompkins  
SWIS Code: 503289  
Tax ID No. 44.-1-1.2  
Property Type: NON-RESIDENTIAL

**Parcel B**

Property Address: North Triphammer Road, Lansing, NY 14882 (Town of Lansing)  
County: Tompkins  
SWIS Code: 503289  
Tax ID No. 44.-1-3.3  
Property Type: NON-RESIDENTIAL

# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE A

### Parcel A – North Triphammer Road, Tax Lot No. 44.-1-1.2

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Lansing, County of Tompkins, State of New York, at North Triphammer Road, being parcel number 44.-1-1.2, serial number 78 on the list of delinquent taxes for the 1997(A) Tax Foreclosure Proceedings, being approximately 23.9 acres, which parcel was formerly assessed to Elizabeth R. Biss and acquired by the County of Tompkins in the 1997(A) Tax Foreclosure Proceedings by deed recorded in the Tompkins County Clerk’s Office on April 3, 1998 in Deed Book 816 at Page 177.

### Parcel B – North Triphammer Road, Tax Lot No. 44.-1-3.3

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York, and being a part of Military Lot #95 in said Town, and more particularly bounded and described as follows:

BEGINNING at a point marked by a pin, which point is located the following four courses and distances from the intersection of the center line of North Triphammer Road with the center line of Triphammer Terrace;

1. Southerly along North Triphammer Road a chord distance of 2,398 feet, more or less, to a point in the center line of North Triphammer Road;
2. South 02 degrees 11’ 35” east 299.59 feet to a point in the center line of North Triphammer Road;
3. South 02 degrees 07’ 20” east 342.32 feet to a point in the center line of North Triphammer Road;
4. North 86 degrees 18’ 07” east, passing through a pin set in the easterly line of North Triphammer Road at 25 feet, and continuing along this course a total distance of 440.13 feet to the point or place of beginning (which point marks the northwesterly corner of Parcel B and the northeasterly corner of Parcel E as shown on the survey map hereinafter referenced);

Running thence south 02 degrees 12’ 53” east, passing through pins at 186 feet, at a further distance of 118.07 feet, for a total distance on this course of 550.07 feet to an existing pin at the southeasterly corner of premises reputedly of Milligan (643 Deeds at page 417);

Running thence north 87 degrees 17’ 07” east along the north line of premises now or formerly of Cornell University (439/452), passing through pins at 300 feet, 600 feet, 900 feet, 1,250 feet, and 1,500 feet, and continuing on this course a total distance of 3,227.40 feet to a pipe;

Running thence north 02 degrees 49’ 26” west along the west line of premises reputedly of Hillcrest Associates (643 Deeds at page 1069) a distance of 432.09 feet to a pipe;

Running thence north 03 degrees 33’ 46” west along the west line of premises reputedly of Krizek (835 Deeds at page 25) a distance of 130.14 feet to a pipe;

*-continued-*





Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE A

### Parcel B – North Triphammer Road, Tax Lot No. 44.-1-3.3

Running thence south 87 degrees 26' 46" west along said premises reputedly of Krizek (835 Deeds at page 25) a distance of 1,812.15 feet to a pipe;

Running thence south 87 degrees 27' 22" west a distance of 1,160.95 feet to a pin (this and the next two courses being along the southerly boundary of other premises of the grantees);

Running thence south 00 degrees 00' 22" east a distance of 16.50 feet to a pin;

Running thence south 86 degrees 18' 07" west a distance of 246.02 feet to the point or place of beginning.

The above-described premises are shown as Parcel B on a survey map entitled "Survey Map showing lands of Po Limited Partnership and Young et al., No. 2665-No. 2677 North Triphammer Road, Town of Lansing, Tompkins County, New York", prepared by T.G. Miller, P.C., Engineers and Surveyors, dated February 13, 2001.

The above-described parcel is being expressly conveyed without access (ingress or egress) to North Triphammer Road and there shall be no implied easement of access or easement of necessity over the portion of the premises being retained by the grantor for the benefit of the premises hereby conveyed (the premises being retained being shown on the T.G. Miller survey being filed concurrently herewith as Parcel C and D/E thereon).

BEING A PORTION OF PARCEL 4(A) described and conveyed in the deed from Ching Po and Liang Chun Po to Po Family Limited Partnership dated January 1, 1999 and recorded January 19, 1999 in the Tompkins County Clerk's Office in Liber 839 of Deeds at page 1.

Also being a portion of the parcel shown and designated as Parcel 2 on a certain survey map entitled "Arthur Milligan, Sr., and Viola Milligan, N. Triphammer (Mil #95), Town of Lansing, Tompkins County, New York", dated October 20, 1988, and drawn by Gary Bruce Davison, a copy of which was filed in said Clerk's Office on November 29, 1988 in Drawer L, Page 71, said Parcel 2 having been conveyed to Liang Chun Po and Ching Po (formerly) Maxim by deed dated November 23, 1988 and recorded November 29, 1988 in said Clerk's Office in Liber 642 of Deeds at page 186.

Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE B-I, REQUIREMENTS

Proposed Insured agrees to Pay and/or disburse the agreed amounts for the interest in the land to be insured and/or according to the mortgage to be insured; Pay us the premiums, fees and charges for the policy; Pay all taxes and/or assessments, levied and assessed against the land, which are due and payable.

**In addition to the above, the following requirements must be met:**

1. Any rights, interests or claims of parties in possession of the land not shown by the public records.
2. Returns, if any, of title search continuation since the effective date shown on Schedule A herein.
3. The following endorsement(s) are to be added to the final policy:

**Fee Policy: NY Standard, Leasehold Owners**

**Note: This Company should be contacted prior to closing to provide any endorsement(s) required, and to calculate the applicable endorsement charge(s).**

4. Proof of payment of taxes, tax liens, tax sales, water rates, sewer rents, user fees and assessments:

**North Triphammer Road, 44.-1-1.2**

**2023 Town and County Taxes (due 01/31/23) PAID**

**2023-24 School Taxes (due 10/01/23) PAID**

**2024 Town and County Taxes – A lien as of 01/01/24, not yet due and payable**

**North Triphammer Road, 44.-1-3.3**

**2023 Town and County Taxes (due 01/31/23) PAID**

**2023-24 School Taxes (due 10/01/23) PAID**

**2024 Town and County Taxes – A lien as of 01/01/24, not yet due and payable**

5. Mortgage(s): NONE

**Note: See Attached Mortgage Schedule Herein**

6. Proposed insured documents not provided at the time of examination.
7. Proof is required that the seller is not a party to any matrimonial action pursuant to Domestic Relations Law Section 236. Attached affidavit is to be signed at closing.
8. PLEASE NOTE: Pursuant to NYCCR 35.7, this commitment includes a notice to the borrower(s). Buyer's Counsel should have this notice signed by their client(s) as soon as possible and returned to our office. Return instructions are included on the disclosure. Thank you.



Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE B-I, REQUIREMENTS

9. The following items must be submitted to this Company following closing:

- ALL Affidavits & Forms Attached to this Commitment
- Fully Executed HUD-1 Settlement Statement
- Purchaser/Borrower Identification
- Seller Identification, if the seller is a natural person
- Payment of Fee and/or Loan Premiums
- Curatives, as required, to omit Schedule B-II items.
- Proof of payment of all real estate taxes.
- Copies of Insured Documents, if this Company is not recording the same.

Receipt of requested items are required in order to issue final policy. Copies can also be emailed to [policies@webtitle.us](mailto:policies@webtitle.us).

10. Patriot searches have been made vs. the name(s) of **John F. Young, Susan M. Barnett, James R. Young, Julie R. Young, and NY Lansing II, LLC**, and the following returns have been found:

**NONE**

11. New York Northern District Bankruptcy searches have been made vs. the name(s) of **John F. Young, Susan M. Barnett, James R. Young, Julie R. Young, and NY Lansing II, LLC** and the following returns have been found:

**NONE**

12. NY Lansing II, LLC is a Limited Liability Company and the following is required:

- a) Copy of articles of organization, proof of filing with the Department of State and payment of filing fees, and proof of publication of the formation.
- b) Copy of operating agreement must be reviewed for authorization and dissolution provisions in particular.
- c) Proof is required that the party or parties executing instruments on behalf of the LLC have authority to act.
- d) Certificate of Good Standing from the New York Department of State.
- e) Affidavit must be obtained to the effect that none of its members are dead, bankrupt, incapacitated, or dissolved nor have any members been expelled nor have withdrawn from membership.
- f) If the entity is foreign (outside of NYS), authority to do business in the State of New York is required in the form of a Certificate of Authority.

Company reserves the right to raise additional exceptions upon examination of the same.

13. The documents creating the leasehold title interest to be insured herein must be recorded prior to or at closing.

Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE B-I, REQUIREMENTS

14. This Company requires a metes and bounds legal description of the leasehold parcel and any easements for ingress and egress to the leasehold parcel, to replace the Schedule A legal description herein of the underlying fee parcel. Said description must be recited in the recorded leasehold documents.
15. If the easements for ingress and egress to the leasehold parcel burden the lands of adjoining owners, said adjoining owners must join in granting said easements.
16. The deed in Liber 818 Page 292 conveys Tax Lots 41.-1-28 and 44.-1-1.2 to John F. Young, Susan M. Barnett, James R. Young and Julie R. Young. Tax Lot 41.-1-28 is a lot of approximately 1 acre in size and adjoins Tax Lot 44.-1-1.2 to the north, but was not included in the client's title order. If said Tax Lot 41.-1-28 was intended to be included, please contact WebTitle Agency to amend this title commitment.
17. Questions about this report should be directed to John Villani at [jvillani@webtitle.us](mailto:jvillani@webtitle.us).



Title No: WTA-23-012836

## COMMITMENT FOR TITLE INSURANCE SCHEDULE B-II, EXCEPTIONS

Any policy we issue will have the following exceptions, unless they are taken care of to our satisfaction:

1. Any rights, interests or claims of parties in possession of the land not shown by the public records.
2. Any rights, interest or claims affecting the land, that a correct survey would show, and an inspection of the premises would disclose.
3. No title insured to any lands lying within the bounds of any street or highway.
4. Exact acreage is not insured herein.
5. Easement granted to New York State Electric & Gas Corporation as set forth by instrument dated July 2, 1953 and recorded on August 13, 1953 in Liber 360, Page 472. (Affects tax Lot 44.-1-1.2)
6. Easement granted to New York State Electric & Gas Corporation as set forth by instrument dated May 7, 1968 and recorded on July 30, 1968 in Liber 476, Page 857. (Affects tax Lot 44.-1-1.2)
7. Easement granted to New York Telephone Company as set forth by instrument dated May 26, 1976 and recorded on June 8, 1976 in Liber 551, Page 849. (Affects Tax Lot 44.-1-1.2)
8. Right of Way and Easement granted to Town of Lansing as set forth by instrument dated September 6, 1989 and recorded on January 23, 1990 in Liber 652, Page 268. (Affects Tax Lot 44.-1-1.2)
9. Right of Way granted to New York State Electric & Gas Corporation as set forth by instrument dated October 5, 1935 and recorded on March 4, 1936 in Liber 239, Page 106 (as recited in the Deed from Knettles to Milligan, recorded September 12, 1944 in Liber 272, page 238). (Affects 44.-1-3.3)
10. Right of Way granted to Ovid Electric Company as set forth by instrument dated August 20, 1919 and recorded on May 6, 1919 in Liber 5 of Miscellaneous Records, Page 83 (as recited in the Deed from Knettles to Milligan, recorded September 12, 1944 in Liber 272, Page 238). (Affects 44.-1-3.3)
11. Easement granted to New York State Electric & Gas Corporation as set forth by instrument dated May 7, 1968 and recorded on July 30, 1968 in Liber 476, Page 861. (Affects Tax Lot 44.-1-3.3)
12. Easement granted to New York Telephone Company as set forth by instrument dated June 5, 1976 and recorded on June 8, 1976 in Liber 551, Page 852. (Affects Tax Lot 44.-1-3.3)
13. Per language in the deed in Liber 900 Page 17, access from Tax Lot 44.-1-3.3 to a public road is not insured.

**Title No: WTA-23-012836**

**COMMITMENT FOR TITLE INSURANCE  
MORTGAGE SCHEDULE**

**NONE**





Title No: WTA-23-012836

**DOMESTIC RELATIONS LAW SECTION 236 AFFIDAVIT**

**PREMISES:** North Triphammer Road and North Triphammer Toad, Lansing, NY 14882

The undersigned Buyer and/or Seller, being first duly sworn, severally depose(s) and say(s):

I am/We are this day refinancing, acquiring or selling the real estate referenced above (hereinafter, the "Premises").

That Deponent is the owner/mortgagor of real property more commonly referenced above, having taken title by Deed recorded in the County Clerk's Office.

That Deponent is not currently a party to any matrimonial action commenced on or after September 1, 2009.

This Affidavit is made for the purpose of inducing third parties to purchase and/or mortgage the real property referenced above knowing that such parties shall rely upon the truth of the above statements.

Further, this affidavit is executed to induce WebTitle Agency and its Underwriter to issue its policy of title insurance covering said premises, knowing that they will rely on the statements herein made are true.

Dated: \_\_\_\_\_

**SELLER:**

\_\_\_\_\_  
**John F. Young**

\_\_\_\_\_  
**Susan M. Barnett**

\_\_\_\_\_  
**James R. Young**

\_\_\_\_\_  
**Julie R. Young**

**STATE OF NEW YORK**

**COUNTY OF** \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_



# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Title No: WTA-23-012836

## LLC AFFIDAVIT (Purchaser)

**PREMISES: North Triphammer Road and North Triphammer Toad, Lansing, NY 14882**

\_\_\_\_\_, ("Deponent") Member/Manager of **NY Lansing II, LLC**, a New York limited liability company ("Purchaser"), being duly sworn, deposes and says:

That Deponent resides in the County of \_\_\_\_\_, State of \_\_\_\_\_ and is a citizen of the United States of America; that he (she) is over the age of twenty-one years, and is a member and/or manager of \_\_\_\_\_, a duly created limited liability company, organized and existing under and by virtue of the Laws of the State of New York, with its principal office located at \_\_\_\_\_, New York, and that Deponents, as such member/manager, is duly authorized to make this affidavit.

That the articles of organization of \_\_\_\_\_ were duly published for six (6) consecutive weeks in \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_ and proof thereof was duly filed in the office of the New York Secretary of State and that Purchaser is now in good standing thereunder. That the articles of organization have not been modified since its formation, and that as member/manager I have authorization to execute closing documents for real estate transactions.

That I am the sole member/manager of said LLC and no other person or entity has any ownership interest in (or claim against any member's interest in) said LLC. Other members, if any, are stated here: \_\_\_\_\_.

That none of its members are dead, bankrupt, incapacitated, or dissolved nor have any members been expelled nor have withdrawn from membership.

That there are no judgments, injunctions, decrees, attachments, or orders of any court for the payment of money against said LLC or to which it is a party, unsatisfied or not cancelled of record in any of the federal or state courts of the United States of America or any suit or proceeding pending anywhere affecting the Property.

That no case or proceeding in bankruptcy has ever been instituted by or against said LLC or any of its members in any federal or state court of the United States of America nor has said LLC at any time made an assignment for the benefit of creditors. No filing in bankruptcy is contemplated by said LLC.

That no statement of fact has been omitted by Deponent(s) from this affidavit which would make this affidavit misleading or incorrect, or which, with the mere passage of time, would make this affidavit misleading or incorrect. This affidavit is intended to be relied on by induce WebTitle Agency and its Underwriter to issue a policy of insurance covering the above stated premises.

\_\_\_\_\_  
Member/Manager

**STATE OF NEW YORK**

**COUNTY OF \_\_\_\_\_**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_





# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Title No: WTA-23-012836

## INDIVIDUAL SELLER(S) AFFIDAVIT

**PREMISES: North Triphammer Road and North Triphammer Toad, Lansing, NY 14882**

**John F. Young, Susan M. Barnett, James R. Young and Julie R. Young**, ("Deponent") being duly sworn, deposes and says:

1. I am / We are this day selling the above referenced premises.
2. I / We have not been known by any other name except: \_\_\_\_\_
3. That there is not any other contract to sell the Property or any part thereof nor granted any option or right of first refusal to any person or entity with respect to the Property. That there are no existing licenses, leases, oral or written, recorded or unrecorded, affecting the Property or any part thereof.
4. That there are no tenants at the premises.
5. Any fence(s), driveway(s), shed(s), deck(s), retaining wall(s), garage(s), swimming pool(s) and any other improvement(s) (hereinafter "Improvement") are located wholly within the perimeter of the property.
  - a. No demand has been made to remove any Improvement;
  - b. No Improvement has been intended to establish the boundary lines between the property and the adjoining properties;
  - c. No one else has claimed title to the property within the surveyed boundary lines;
  - d. No dispute exists with adjoining owners as to the ownership or location of any Improvement.
6. The property have continuously occupied openly and notoriously, exclusively, under claim of rightful ownership, adversely to any other claims for my / our entire ownership, and to the best of my / our knowledge for more than twenty (20) consecutive years, during which period the title has not been disputed and the possession of the property has been peaceable and undisturbed.
7. That all sewer or water rents, charges, meter charges or other utility charges or assessments have been or will be paid or discharged fully by as of the date of closing (unless otherwise agreed to with the Buyer by possession agreement or by closing adjustment credit to the Buyer at closing) with respect to the Property.
8. That no work has been performed upon or with respect to the Property within the past eight (8) months that could ripen into a mechanic's lien and that there are no outstanding liens or violations which have ripened to liens, against the Property or any part thereof, whether or not such liens or violations are reflected in the records of the County Clerk in said County.
9. That there are no judgments, injunctions, decrees, attachments, or orders of any court for the payment of money against me / us, unsatisfied or not cancelled of record in any of the federal or state courts of the United States of America or any suit or proceeding pending anywhere affecting the Property.
10. That no case or proceeding in bankruptcy has ever been instituted by or against me /us in any federal or state court of the United States of America nor has an assignment been made for the benefit of creditors.



# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Title No: WTA-23-012836

## INDIVIDUAL SELLER(S) AFFIDAVIT

I hereby give this undertaking and indemnity to WebTitle Agency, Inc. and their Underwriter to issue its Title Policy. I realize they will rely on the truth of the statements herein contained.

\_\_\_\_\_  
**John F. Young**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Susan M. Barnett**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**James R. Young**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Julie R. Young**

Dated: \_\_\_\_\_

STATE OF NEW YORK

COUNTY OF \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_





Title No: WTA-23-012836

## MEMORANDUM OF TITLE FEES

**THIS IS NOT AN INVOICE. DO NOT PAY FROM THIS MEMORANDUM.**

New York State Insurance Law Section 2119 (f) & 35.6 (a) requires that we provide you with, and that you sign, this memorandum that specifies the cost of any ancillary services that we provide together with the title insurance premium being charged.

PROPERTY ADDRESS: North Triphammer Road and North Triphammer Toad, Lansing, NY 14882

<u>Seller Charge</u>	<u>Amount</u>		<u>Buyer / Borrower Charge</u>	<u>Amount</u>
Fee Premium		X	Fee Premium	\$688.00
Fee Endorsements			Fee Endorsements	
Loan Premium			Loan Premium	
Loan Endorsements			Loan Endorsements	
Land Records Search & Examination of Title		X	Land Records Search	\$900.00
Additional Work Charges, FC Abstract			Survey Locate and/or Inspection	
Bankruptcy, Tax and Patriot Searches			Bankruptcy, Tax and Patriot Searches	
Judgment & Lien Search			Judgment & Lien Search	
UCC Search			UCC Search	
Document Copies		X	Document Copies	\$88.00
Continuation Search & Examination			Continuation Search & Examination	
Departmental (Municipal) Searches			Departmental (Municipal) Searches	
ACRIS Preparation			ACRIS Preparation	
Overnight / Courier Fees			Overnight / Courier Fees	
Recording Service Fee			Recording Service Fee	
Abstract Locate Fee			Abstract Locate Fee	
Abstract Redate Fee			Abstract Redate Fee	
40 Year Abstract			40 Year Abstract	
Tax Escrow - Payoff Fee			Tax Escrow - Payoff Fee	
Franchise Tax Report				
<b>TOTAL</b>	<b>\$0.00</b>		<b>TOTAL</b>	<b>\$1,626.00</b>

---

NY Lansing II, LLC



Title No: WTA-23-012836

## NOTICES

All of the recording information contained herein refers to the Public Records of the County shown on Schedule A herein, unless otherwise indicated. Any reference herein to a Book and Page is a reference to the Official Record Books of said county, unless indicated to the contrary.

All notices required to be given and any statement in writing required to be furnished by the Company or to the Company shall include the number of this policy.

WebTitle Agency cares about its customers and their ability to obtain information and service on a convenient, timely and accurate basis. A qualified staff of service representatives is dedicated to serving you. A toll-free number is available for your convenience in obtaining information about coverage and to provide assistance in resolving complaints at 1-866-932-6322. Office hours are from 8:00 a.m. through 5:00 p.m. Monday through Friday.



# FIDELITY NATIONAL TITLE INSURANCE COMPANY

Title No: WTA-23-012836

## PRIVACY POLICY

### **We Are Committed to Safeguarding Customer Information**

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our Underwriter, we have adopted this Privacy Policy to govern the use and handling of your personal information.

### **Applicability**

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity.

### **Types of Information**

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or other means.
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

### **Use of Information**

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

### **Former Customers**

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

### **Confidentiality and Security**

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.



1 Deed  
Rec 09/12/44  
L 272 P 238  
Tax Lot 44.-1-3.3

Section 3, Item d.

~~of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. And the grantor will hold the right to receive such consideration as a trust fund to be applied for the purpose and in the manner aforesaid.~~

~~IN WITNESS WHEREOF, the party of the first part has hereunto set her hand and seal the day and year first above written.~~

~~Jessie P. Shaw L.S.~~

~~U.S.I.R. \$6.05~~

~~STATE OF NEW YORK )  
COUNTY OF TOMPKINS) SS..~~

~~On this 12 day of September Nineteen Hundred and forty-four before me, the subscriber, personally appeared Jessie P. Shaw to me personally known and known to me to be the same person described in and who executed the within Instrument, and she duly acknowledged to me that she executed the same~~

~~Harold E. Simpson  
Notary Public~~

~~Recorded September 12, 1944 at 10:55 A. M.  
City Stamp~~

*H. G. Morris* CLERK.

Delta Knettles, Ind. :  
& as Exrx. :  
to :  
Lester J. Milligan &c. :  
----- X

THIS INDENTURE, Made the 12th day of June, Nineteen Hundred and Forty-four. BETWEEN DELTA KNETTLES, of the Town of Lansing, Tompkins County, New York, individually and as Executrix of the last Will and Testament of JOHN P. KNETTLES, late of the Town of Lansing, Tomp-

kings County, New York, deceased, party of the first part, and LESTER J. MILLIGAN and VIOLA MILLIGAN, his wife, of the same place, as tenants by the entirety, parties of the second part:

WITNESSETH, That the party of the first part, by virtue of the power and authority to her given in and by the said last Will and Testament, and in consideration of ONE Dollar, (\$1.00 &c.) lawful money of the United States, to her in hand paid by the parties of the second part, does hereby grant and release unto the parties of the second part, the survivor thereof his/her heirs and assigns forever,

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lansing, County of Tompkins, and State of New York, and being part of Lots Nos. 92 and 95 in said Town, and bounded as follows: Bounded on the west by the center of the highway leading from Asbury Church to Ithaca; bounded on the north by lands owned or occupied by Anthony Dutch, and formerly owned by William Drake; bounded on the east by lands of James Krizek and bounded on the south by lands of Fred R. McGraw, Sr. and containing about fifty (50) acres of land, be the same more or less.

Being the same premises conveyed to party of the first part by Fred R. McGraw, Jr. and Nina McGraw by deed recorded in the Tompkins County Clerk's office in Liber 243 of Deeds at page 42.

This conveyance is subject to a right of way heretofore granted to the New York State Electric & Gas Corporation by deed recorded in said Clerk's office in Liber 239 of Deeds at page 106, and also subject to any rights which the public may have in the highway adjoining, and also subject to a right of way heretofore given to the Ovid Electric Company by right of way recorded in said Clerk's office in Liber 5 of Miscellaneous Records at page 83.

TOGETHER with the appurtenances, and also all the estate which the said Testator had at the time of his decease, in said premises, AND ALSO the estate therein, which the party of the first part has or has power to convey or dispose of, whether individually, or by virtue of said Will or otherwise.

TO HAVE AND TO HOLD the premises herein granted unto the parties of the second part, the survivor thereof his/her heirs and assigns forever.



AND the party of the first part covenants that she has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

IN WITNESS WHEREOF, the party of the first part has hereunto set her hand and seal the day and year first above written.

US.I.R. \$1.65

Delta Knettles L.S.  
Individually and as executrix of  
John P. Knettles

STATE OF NEW YORK )  
COUNTY OF TOMPKINS ) SS.:

On this 19th day of June, Nineteen Hundred and Forty-four before me, the subscriber, personally appeared Delta Knettles the Executrix of the last Will and Testament of John P. Knettles to me personally known and known to me to be the same person described in and who executed the within Instrument, and she duly acknowledged to me that she executed the same individually and as such Executrix as aforesaid for the purposes therein mentioned.

B. F. Sovocool  
Notary Public.

Recorded September 12, 1944 at 1:35 P. M.

*H. G. Hoover* CLERK.

~~Frank Teeter : THIS INDENTURE, Made the 11th day of September, Nineteen  
to : Hundred and Forty-four, BETWEEN FRANK TEETER, residing in  
Gordon Washburn &c. : the Village of Trumansburg, County of Tompkins and State of  
- - - - - X New York, party of the first part, and GORDON WASHBURN AND  
ELLEN WASHBURN, husband and wife, with right of survivorship, survivor to take the whole, re-  
siding at 323 1/2 Cascadilla Street, in the City of Ithaca, New York, parties of the second part,~~

~~WITNESSETH, that the party of the first part, in consideration of One Dollar (\$1.00) law-  
ful money of the United States, paid by the parties of the second part, does hereby grant and  
release unto the parties of the second part, their heirs and assigns forever,~~

~~ALL THAT TRACT OR PARCEL OF LAND in the Town of Newfield bounded and described as follows:  
Commencing at a point in the west line of the highway known as the Newton Road at the southeast  
corner of lands heretofore conveyed to Dora M. Teeter by deed recorded in Tompkins County Clerk's  
office in Liber 248 of Deeds at page 403, running thence southerly along the west line of said  
highway a distance of 175 feet to an iron stake; running thence westerly in a line parallel  
with the southerly line of said lands of Dora M. Teeter a distance of 250 feet to an iron stake;  
running thence northerly in a line parallel with the west line of said highway 175 feet to the  
southerly line of said lands of Dora M. Teeter; thence easterly along said southerly line of  
said lands of Dora M. Teeter a distance of 250 feet to the place of beginning, containing one  
acre of land, be the same more or less. Being the same premises conveyed to party of the first  
part by Robert McGuire by deed dated January 14, 1939, and recorded in the Tompkins County  
Clerk's office on January 21, 1939, in Liber 249 of Deeds at page 477.~~

~~TOGETHER with the appurtenances and all the estate and rights of the party of the first  
part in and to said premises,~~

~~TO HAVE AND TO HOLD the premises herein granted unto the parties of the second part, their  
heirs and assigns forever.~~

~~AND said party of the first part covenants as follows:~~

~~FIRST, That the parties of the second part shall quietly enjoy the said premises;~~

~~SECOND, That said party of the first part will forever WARRANT the title to said premises.~~

~~THIRD, That the grantor will receives the consideration for this conveyance and will hold  
the right to receive such consideration as a trust fund to be applied first for the purpose of  
paying the cost of any improvement, and that the grantor will apply the same first to the pay-  
ment of the cost of improvement before using any part of the total of the same for any other~~





H51647

DEEDS No. 239

foregoing instrument, that he said subscribing witness, was present and saw them execute the same; and that he, said witness, at the same time, subscribed his name as witness thereto.

M. C. Avery, Notary Public.

Recorded March 4, 1936 at 5:00 P.M.

*H. Daniel* CLERK

DeWitt LaBar & ano. : NEW YORK STATE ELECTRIC & GAS CORP ITHACA DOCUMENT FILE  
to : Ithaca RWC 197.  
New York State Electric : THE UNDERSIGNED, hereinafter called the GRANTOR being the  
& Gas Corporation : owner of, or having an interest in land situate in the Town  
----- X  
of Lansing, County of Tompkins, State of New York, fronting on the street or highway known as  
Asbury-Dryden Road and bounded on the west by the land of Joseph Krupa and on the east by the  
land of Howard Hagan. IN CONSIDERATION of \$1.00 paid by the Grantee, hereby grants and releases  
unto the New York State Electric & Gas Corporation a corporation organized under the laws  
of the State of New York, having its principal office at Ithaca, N.Y. herein called the  
GRANTEE, its successors and assigns, the right, privilege and authority to construct, recon-  
struct, extend, operate, inspect, maintain and at its pleasure remove, a pole line with the  
necessary wires, cross arms, guy wires, braces and other fixtures or appurtenances used or  
adopted for the transmission and/or distribution of electric current for public or private  
use, upon and over said land and property and/or the highways abutting or running through said  
land. Line running eastwardly from the lands of Joseph Krupa across grantors property along the  
south side of above named road to the lands of Howard Hagan One pole only on said property,  
near Culvert east of residence.

TOGETHER with the right to trim, cut and remove trees and brush to the extent necessary to clear said wires and pole line by at least 10 feet.

PROVIDED, however, that any damage (other than for cutting trimming or removing trees, as above provided) to the property of the Grantor, caused by the Grantee in constructing or repairing said line, shall be borne by the Grantee.

DATED this 10th day of December 1935.

IN PRESENCE OF  
C. O. Prowse  
Subscribing Witness  
C. O. Prowse  
Subscribing Witness.

DeWitt LaBar L.S.  
Cora LaBar L.S.

(Subscribing Witness Acknowledgment)

STATE OF NEW YORK )  
COUNTY OF TOMPKINS )s On this 10 day of December 1935, before me personally came C.O. Prowse the subscribing witness to the foregoing Instrument, with whom I am personally acquainted, who being by me duly sworn did depose and say that he resides in Town of Ithaca, that he knew DeWitt LeBar & Cora LeBar to be the individuals described in and who executed the foregoing Instrument; that he, said subscribing witness, was present and saw them execute the same; and that he, said witness, at the same time, subscribed his name as witness thereto.

M. C. Avery, Notary Public.

Recorded March 4, 1936 at 5:00 P.M.

*H. Daniel* CLERK



# This Indenture,

LEER 405 PAGE 535

Made the **28<sup>th</sup>** day of **April**  
**Nineteen Hundred and Fifty-eight**

3 Outsale Deed

Rec 05/09/58

L 405 P 535

Between

**LESTER J. MILLIGAN SR. and VIOLA MILLIGAN, husband and wife, both of the Town of Lansing, Tompkins County, New York, Individually and as Tenants by the Entirety,**

*parties of the first part, and*

**LESTER JAMES MILLIGAN JR. and MILDRED MILLIGAN, husband and wife, both of the Town of Lansing, Tompkins County, New York, as Tenants by the Entirety,**

*parties of the second part,*

Witnesseth that the *parties of the first part, in consideration of*

----- **ONE** ----- **Dollar (\$ 1.00 )**  
*lawful money of the United States, in hand paid by the parties of the second part, do hereby grant and release unto the parties of the second part, his or her survivor, their <sup>distaffs</sup> and assigns forever, all*

**THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, Tompkins County, New York and being a part of Military Lot #95 in said Town, more particularly bounded and described as follows:**

**BEGINNING** at a point in the center line of the North Triphammer Road or Kline Road at the northwest corner of premises conveyed to the Parties of the First Part by deed of the Estate of John P. Knettels, dated June 12, 1944 and recorded in the Tompkins County Clerk's office in Liber 272 of Deeds at page 238; running thence easterly along the south line of lands of Hailstork (formerly Deutsch)(said line being approximately 9.4 chains south of the north line of Military Lot #95), a distance of 225 feet to a point; running thence southerly parallel with the center line of North Triphammer Road and 225 feet easterly therefrom; a distance of 186 feet to a point; running thence westerly and parallel with the Deutsch-Hailstork line, a distance of 225 feet to a point in the center line of the North Triphammer Road; running thence northerly along the center line of the North Triphammer Road, a distance of 186 feet to the place of beginning.

**SUBJECT TO** the rights of the New York State Electric and Gas Corporation for a pole line along the east side of Triphammer Road, granted by Fred McGraw, et al October 5, 1935 and recorded in the Tompkins County Clerk's office in Liber 239 of Deeds at page 106.

The conveyed premises comprise a parcel of approximately 0.96 acres in the northwest corner of lands conveyed to the Parties of the First Part by deed of Knettels aforesaid.



Together with the appurtenances and all the estate and rights of the part ies of the first part in and to said premises,

To have and to hold the premises herein granted unto the part ies of the second part, his or her survivor, their distributees and assigns forever.

And said Parties of the First Part

covenant as follows: First, That the part ies of the second part shall quietly enjoy the said premises;

Second, That said Parties of the First Part

will forever Warrant the title to said premises.

Third, That, in Compliance with Sec. 13 of the Lien Law, the grantors will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Witness Whereof, the part ies of the first part ha ve hereunto set their hands and seals the day and year first above written.

In Presence of

Lester J. Milligan Sr.
Viola Milligan

State of New York County of Tompkins } On this 21st day of APRIL, 1958. Nineteen Hundred and Fift-eight before me, the subscriber, personally appeared.

LESTER J. MILLIGAN SR. and VIOLA MILLIGAN

to me personally known and known to me to be the same person s described in and who executed the within instrument, and they severally acknowledged to me that they executed the same.

Betty Humphrey Notary Public

BETTY HUMPHREY NOTARY PUBLIC, State of New York No. 55-189525 Qualified in Tompkins County My Commission Expires March 28, 1967

A true copy of the original recorded on the 9 day of May, 1958 at 1:35 o'clock P.M., and examined. H. L. Morris Clerk.

4 Easement  
Rec 07/30/68  
L 476 P 861

**02211  
Easement  
(Gas Pipe-Line)**

The Undersigned, hereinafter called the Grantor(s), being the owner of or having an interest in land situate in the Town of Lansing County of Tompkins State of New York, fronting on the street or highway known as North Triphammer Road and bounded southerly by the land of Arthur Milligan Sr. and northerly by the land of Arthur Milligan Jr.

In Consideration, of \$1.00 paid by the Grantee, hereby grants and releases unto the New York State Electric & Gas Corporation, a corporation organized under the laws of the State of New York, having an office at Town of Dryden, (no street address), County of Tompkins, State of New York, herein called the Grantee, its successors and assigns, the right, privilege, and authority to construct, reconstruct, extend, operate, inspect, maintain, and at its pleasure, remove a gas pipeline with the necessary fixtures and appurtenances used or adopted for the transmission and/or distribution of gas for public or private use, upon and through said land and property and/or the highways abutting or running through said land as follows:

Said gas pipeline to extend from the southerly to the northerly property line of Grantor's land parallel to the center of North Triphammer road and about 55 feet easterly therefrom. Together with service extensions.

Reserving, however, to the Grantor(s) the use and enjoyment of the said premises, except for the erection of buildings or other structures over said pipe line facilities, provided that such use shall not interfere with or obstruct the rights herein granted or create a potential hazard. All pipe lines shall be laid sufficiently deep so that they will not interfere with normal cultivation of the land.

Together with the right to trim, cut, and remove trees and brush to a width of 5 feet along either or both sides of said gas pipe-line.

Provided, however, that any damage (other than for trimming, cutting, or removing trees, as above provided) to the property of the Grantor(s), caused by the Grantee in constructing or repairing said line, shall be borne by the Grantee.

In Witness Whereof, the Grantor(s) hereunto set their hand(s) and seal(s) this 7th day of May, 1968.

In Presence of:

Arthur J. Milligan Sr. (L.S.)  
Address: 665 North Triphammer Road  
Shady, New York (N.Y.)  
Viola Milligan (L.S.)  
Address: 665 North Triphammer Road (N.Y.)  
Shady, New York  
(L.S.)  
Address: \_\_\_\_\_ (L.S.)  
Address: \_\_\_\_\_ (L.S.)  
Address: \_\_\_\_\_ (L.S.)  
Address: \_\_\_\_\_ (L.S.)

LIBER 476 PAGE 861

NW-4 4-66

REC 476 P 861



LIBER 476 PAGE 862  
YORK STATE ELECTRIC & GAS CORP. - ITHACA DOCUMENT FILE

(Personal Acknowledgment)

State of New York  
County of Tompkins } ss:

On this 7<sup>th</sup> day of MAY  
1968, before me, the subscriber, personally appeared  
Lester J. Milligan Sr.  
AND  
Viola Milligan

to me personally known and known to me to be the same  
person(s) described in and who executed the within instru-  
ment and duly acknowledged to me the execution of the  
same.

*John D. Murray*  
(Notary Public)

JOHN D. MURRAY  
Notary Public, State of New York  
Qualified in Tompkins County  
Term Expires March 24, 1970

REMARKS  
R<sub>1</sub>

Paid from Working Fund ..... Office  
Ck. No. .... Amt. .... Date .....  
Ck. No. .... Amt. .... Date .....

RETURN TO  
CORPORATE DOCUMENT DEPARTMENT  
NEW YORK STATE ELECTRIC & GAS CORP.  
POST OFFICE BOX 287  
ITHACA, NEW YORK

A true copy of the original recorded on the 30<sup>th</sup> day of  
July 1968 at 12:00 o'clock M., and examined.

*Sally Robinson*  
Clerk

5 Easement  
Rec 06/08/76  
L 551 P 852

LIBER 551 PAGE 852

2102

CONSIDERATION LESS THAN \$100.00

RECEIVED of the NEW YORK TELEPHONE COMPANY whose principal office is at 140 West Street, City, County and State of New York, hereinafter referred to as the Grantee, One Dollar (\$1.00) in consideration of which

Viola Milligan of 665 North Triphammer Rd. Ithaca N.Y  
of Town of Lansing

hereinafter called the Grantor, (s) hereby grant (s) and convey (s) with general Warranty unto the Grantee its successors, assigns, lessees and agents, a perpetual right of way and easement to construct, maintain, repair, replace and operate its communication lines, consisting of such poles, cables, conduits, manholes, fixtures, marker poles and appurtenances, as the business of the Grantee, its successors, assigns, and lessees, may from time to time require under, through, over and across the property which the Grantor (s) own (s) or in which the Grantor (s) may have an interest, being a part of \_\_\_\_\_ Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_ of the Town of Lansing, County of Tompkins and

State of New York, and also upon, over and/or under the highways upon or adjoining said property, with the right at all times to cross and recross over said property with vehicles and equipment for the purpose of exercising the rights herein granted and reaching points on Grantee's right of way on neighboring lands, and with the right to remove from time to time all trees, limbs of trees, brush and structures along said lines which may interfere with or endanger the construction or maintenance of the same, and the Grantor (s) for herself heirs, assigns, successors and legal representatives, hereby covenant (s) that no building or other structure will be erected or permitted within 10 feet of said lines.

RETURN TO  
RIGHT OF WAY & CLAIMS AGENT  
NEW YORK TELEPHONE CO.  
64 HENRY STREET  
BINGHAMTON, NEW YORK

The Grantee, its successors, assigns and/or lessees shall compensate the Grantor (s) for all damage to crops and shall repair any damage done to the driveways, fences and fields in the exercise of the rights herein granted:

IN WITNESS WHEREOF, this instrument has been duly executed by the Grantor (s) under seal this 5 day of June, 1976

Witnesses:

Viola Milligan L.S.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
L.S.  
L.S.  
L.S.

STATE OF NEW YORK }  
COUNTY OF Tompkins } ss:

On the 5 day of June, 1976, before me personally appeared Viola Milligan to me known, and known to me to be the same person described in and who executed the within instrument, and

she acknowledged to me that she executed the same.

Charles R. Hutchinson  
Notary Public

CHARLES R. HUTCHINSON  
Notary Public in the State of New York  
Appointed in Broome Co., No. 04-70, 1975  
My Commission Expires March 31, 1978

TOMPKINS COUNTY  
019625  
REAL ESTATE TRANSFER TAX STATE OF NEW YORK  
Dept. of Taxation JUN-8-76  
& Finance PB. 10643  
= 00.00  
RJD

2500

Tompkins County, ss:  
Recorded on the 24 Day of June, 1976 at 8.15 o'clock P. M., in Liber 551 of 1976 at Page 852 and examined.  
Lucille A. ... Clerk





# This Indenture,

*JULY*

Made the *13<sup>TH</sup>* day of  
Nineteen Hundred and Seventy-seven

day of

Between

VIOLA MILLIGAN  
665 North Triphammer Road  
Ithaca, New York,

party of the first part, and

ARTHUR F. MILLIGAN and CATHERINE M. MILLIGAN  
661 North Triphammer Road  
Ithaca, New York

Witnesseth that the party of the first part, in consideration of \* \* \* \* \*  
\* \* \* \* \* One and No/100ths \* \* \* \* \* Dollar (\$1.00\*\*\*\*\*)  
lawful money of the United States, and other good and valuable consideration  
paid by the parties of the second part, do es hereby grant and release unto the  
part ies of the second part, their heirs, executors and assigns forever, all  
THAT PIECE OR PARCEL OF LAND situate in the Town of Lansing, County  
of Tompkins and State of New York, being a part of Lot #95 in said  
town and more particularly bounded and described as follows:  
COMMENCING at a point in the center line of North Triphammer Road  
in said town, said point being the northwest corner of premises of  
Arthur F. Milligan and Katherine M. Milligan by deed of Lester J.  
Milligan and Viola Milligan dated May 27, 1950 and recorded in the  
Tompkins County Clerk's Office in Liber 331 at Page 504; thence  
running easterly along the northerly line of premises of said Arthur  
F. Milligan and Katherine M. Milligan to the northeast corner thereof;  
thence running southerly along the easterly line of said Arthur F.  
Milligan and Katherine M. Milligan premises 234 feet to a point  
marking the southeast corner of said premises; thence easterly on a  
course which is the extension of the southerly boundary of the said  
Arthur F. Milligan and Katherine M. Milligan premises 215 feet to a  
point; thence northerly 246 feet to a point; thence westerly and on a  
course parallel with the northerly boundary of said Arthur F. Milligan  
and Katherine M. Milligan premises 440 feet to the center line of the  
said North Triphammer Road; thence southerly along the center line of  
North Triphammer Road 12 feet to the point or place of beginning.

BEING the same premises conveyed to Grantor herein and Lester J.  
Milligan by deed of Delta Knottles, Ind and as Executrix of the  
Last Will and Testament of John P. Knottles, deceased, dated June 12  
1944 and recorded in the Tompkins County Clerk's Office September 12,  
1944 in Liber 272 of Deeds at Page 238. The said Lester J. Milligan  
having died the 6th day of July, 1971 leaving Grantor sole surviving  
tenant by the entirety.

SUBJECT TO the rights of the public in and to that portion of said  
premises lying within the bounds of North Triphammer Road.

FURTHER SUBJECT TO any easements or rights of way of record.

LIBER 559 PAGE 282

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,  
To have and to hold the premises herein granted unto the parties of the second part, their heirs, executors, administrators and assigns forever.

And said party of the first part covenants as follows:  
First. That the parties of the second part shall quietly enjoy the said premises;

Second. That said party of the first part will forever warrant the title to said premises.

Third. That, in Compliance with Sec. 13 of the Lien Law, the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Witness Whereof, the party of the first part has hereunto set her hand and seal the day and year first above written.

In Presence of

Mailing Address:  
661 N. Triphammer Rd.  
Ithaca, New York

Being a part of  
Town of Lansing  
Tax Parcel No. 7-44-1-3

RECEIVED
\$ -0-
REAL ESTATE
AUG 8 1977
TRANSFER TAX
TOMPKINS COUNTY

*Viola Milligan*  
Viola Milligan

State of New York }  
County of TOMPKINS } ss. On this 13<sup>th</sup> day of JULY  
before me, the subscriber, personally appeared  
Nineteen Hundred and Seventy-seven

VIOLA MILLIGAN

to me personally known and known to me to be the same person described in and who executed the within Instrument, and she duly acknowledged to me that she executed the same.

*Wesley E. McDevott*

Notary Public  
WESLEY E. McDEVOTT  
Notary Public, State of New York  
No. 781135  
Qualified in Tompkins County  
Commission Expires March 30, 1978

Tompkins County, ss:  
Recorded on the 8<sup>th</sup> Day of August 1977 at  
10:24 o'clock A.M., in Liber 559 of Deeds  
at Page 287 and examined.  
*Lucille Brimble* Clerk



7 POA  
Rec 11/29/88  
L 642 P 182  
Tax Lot 44.-1-3.3

LIBER 642 PAGE 182

10025

Form 578 Statutory Short Form of General Power of Attorney Rev. 9/86



TUTBLANK REGISTERED U. S. PAT. OFFICE  
TUTTLE LAW PRINT, PUBLISHERS, RUTLAND, VT 05701

Notice: the powers granted by this document are broad and sweeping. They are defined in New York General Obligation Law, Article 5, Title 15, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned.

**Know All Men by These Presents, which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:**

That I Viola Milligan, residing at 2665 N. Triphammer Rd. Ithaca,  
*(insert name and address of the principal)*  
New York 14850  
do hereby appoint Arthur F. Milligan, Sr. residing at 2661 N. Triphammer  
*(insert name and address of the agent, or each agent if more than one is designated)*  
Road, Ithaca, New York 14850

**my attorney(s)-in-fact TO ACT**

*(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in the blank the word "severally". Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.*

**First: In my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:**

*(Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (L) inclusive, shall automatically constitute an elimination also of subdivision (M).*

To strike out any subdivisions the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

- (A) real estate transactions; [ ]
- (B) chattel and goods transactions; [ ]
- (C) bond, share and commodity transactions; [ ]
- (D) banking transactions; [ ]
- (E) business operating transactions; [ ]
- (F) insurance transactions; [ ]
- (G) estate transactions; [ ]
- (H) claims and litigation; [ ]
- (I) personal relationships and affairs; [ ]
- (J) benefits from military service; [ ]
- (K) records, reports and statements; [ ]
- (L) full and unqualified authority to my attorney(s)-in-fact to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select: [ ]
- (M) all other matters; [ ]

(Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.)

LIBER 642 PAGE 183

Second: This Power of Attorney shall not be affected by the subsequent disability or incompetence of the principal.

Third: To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation or termination shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

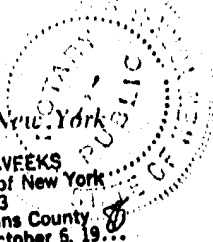
In Witness Whereof, I have hereunto signed my name and affixed my seal this 17 day of April MAY, 1988

Viola Milligan (Signature of Principal) L.S. VIOLA MILLIGAN

State of New York SS. County of Tompkins

On this 17th day of April MAY Nineteen Hundred Eighty Eight before me, the subscriber, personally appeared VIOLA MILLIGAN to me personally known, and known to me to be the same person described in and who executed the foregoing Power of Attorney, and she acknowledged to me that she executed the same

Christine M. Weeks Notary Public for the State of New York



Tompkins County, ss: Recorded on this 29th day of Nov. 1988 at 4:08 P.M., in Liber 642 of 282 at page 182 and examined.

Rachel A. Pierce Clerk

Power of Attorney STATUTORY SHORT FORM

VIOLA MILLIGAN

TO

ARTHUR F. MILLIGAN SR.

Dated, April 1988

Rec. 11.50 Ret. Jeff Coleman

NOV 23 4 52 PM '88

RECEIVED TOMPKINS COUNTY CLERK



8 Deed  
Rec 11/29/88  
L 642 P 186  
Tax Lot 44.-1-3.3

RECEIVED  
\$ 812.00  
REAL ESTATE  
1161 NOV 29 1988  
TRANSFER TAX  
TOMPKINS  
COUNTY

LIBER 642 PAGE 186

10023

WARRANTY DEED

THIS INDENTURE MADE THE 23rd DAY OF November , 1988

BETWEEN VIOLA MILLIGAN, residing at 2665 N. Triphammer Road, Ithaca, New York 14850 party of the first part, and LIANG CHUN PO and CHING PO MAXIM, residing at 201 Elmwood Avenue, Ithaca, New York 14850 as joint tenants, parties of the second part,

WITNESSETH, that the party of the first part, in consideration of ONE AND NO/100 (\$1.00) DOLLAR, lawful money of the United States, and other good and valuable consideration paid by the parties of the second part, do hereby grant and release unto the parties of the second part, their heirs distributees and assigns forever,

ALL THAT PIECE OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York and being a part of Military Lot #95 in said Town more particularly bounded and described as follows: Commencing at a point in the centerline of N. Triphammer Road said point being located Northerly a distance of 2,306 feet along said centerline from it's intersection with the centerline of Cherry Road in said town; thence running south 81° 36' East and passing through a 5/8 inch rebar with survey cap at 25 feet and running a total distance of 440 feet to a point marked by a 5/8 inch rebar with survey cap; thence running South 08° 54' West a distance of 246 feet to a point marked by a 5/8 inch rebar with survey cap; thence running South 81° 36' East 3,227.21 feet to a point marked by a 5/8 inch rebar with survey cap; thence running North 08° 20' East a distance of 432.54 feet to a point marked by an existing iron pipe; thence running North 07° 42' East a distance of 130.26 feet to a point marked by an existing iron pipe; thence running North 81° 27' West a distance of 2,973.66 feet to a point marked by a 5/8 inch rebar with a survey cap; thence running South 11° 06' West a distance of 16.5 feet to a point marked by a 5/8 inch rebar with a survey cap; thence running North 82° 35' West a distance of 461.06 feet to a point marked by a 5/8 inch rebar with survey cap; thence running South 08° 54' West a distance of 186 feet to a point marked by a 5/8 inch rebar with survey cap; thence running North 82° 35' West and passing through a 5/8 inch rebar with survey cap at 200 feet and running a total distance of 225 feet to a point in the centerline of N. Triphammer Road; thence South 08° 54' West a distance of 110.34 feet along the centerline of N. Triphammer Road to a point and the place of beginning containing 43.933 acres of land more or less.

SUBJECT TO the following:

- 1. The rights of the public in and to that portion of the above described premises lying within the bounds of the public

See Agreement, recorded in Deeds Bk. 664, p. 675

See Deeds, Liber 642 page 182.

WESLEY E. McDERMOTT  
ATTORNEY AT LAW  
405 N. TIOGA ST.  
ITHACA, N. Y. 14850  
(607) 273-8410

highway.

2. A right of way given by Viola Milligan to the New York Telephone Company, dated June 5, 1976 and recorded June 8, 1976 in the Tompkins County Clerk's Office in Liber 551 of Deeds at page 852.

3. An easement given by Lester J. Milligan Sr. and Viola Milligan, to the New York State Electric and Gas Corporation dated May 7, 1968 and recorded in the Tompkins County Clerk's Office on July 30, 1968 in Liber 476 of Deeds at page 861.

4. A right of way given by Nina McGraw and Fred McGraw and Delta H. Knettles and Charles H. Blood to New York State Electric and Gas Corporation dated October 5, 1935 and recorded in the Tompkins County Clerk's Office on March 4, 1936 in Liber 239 of Deeds at page 106.

5. A right of way given by J. P. Knettles to Ovid Electric Company dated August 20, 1919 and recorded May 6, 1919 in the Tompkins County Clerk's Office in Liber 5 of miscellaneous records at page 83.

FURTHER SUBJECT TO life use of the residence house and two acres of land contiguous to said dwelling house by Viola Milligan only, provided however that the said use shall be as a residence only and not as rental property or for any other use. The said Viola Milligan shall pay all utilities, insurance, water and maintenance cost, keeping said premises in as good condition as on the date hereof.

BEING a part of the same premises conveyed to grantor herein and Lester J. Milligan by Deed of Delta Knettles individually and as executrix of the Last Will And Testament of John P. Knettles dated June 12, 1944 and recorded in the Tompkins County Clerk's Office on September 12, 1944 in Liber 272 of Deeds at page 238. The said Lester J. Milligan Sr. having died on July 6, 1971 leaving grantor herein as the sole surviving tenant by the entirety.

map

ALSO being the parcel shown and designated as parcel 2 on a certain survey map entitled Arthur Milligan Sr. and Viola Milligan N. Triphammer Road (Mil #95) Town of Lansing Tompkins County New York dated October 20, 1988 and drawn by Gary Bruce Davison a copy of said map being filed concurrently herewith.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the part of the second part, their heirs, distributees and assigns forever.

AND SAID party of the first part covenant as follows:

FIRST, that the parties of the second part shall quietly

WESLEY E. McDERMOTT  
ATTORNEY AT LAW  
405 N. TIOGA ST.  
ITHACA, N. Y. 14850  
(607) 273-8410



LIBER 642 PAGE 188

enjoy the said premises;

SECOND, that said party of the first part, will forever WARRANT the title to said premises.

THIRD, That, in Compliance with Sec. 13 of the Lien Law, the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has hereunto set her hand and seal the day and year first above written.

IN PRESENCE OF

*Arthur F. Milligan Sr. Pres. Sec. L.S.*  
VIOLA MILLIGAN *milligan*

STATE OF NEW YORK )  
COUNTY OF TOMPKINS) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, Nineteen Hundred and EIGHTY EIGHT before me, the subscriber, personally appeared VIOLA MILLIGAN, to me personally known and known to me to be the same person described in and who executed the within Instrument, she acknowledged to me that she executed the same.

NOTARY PUBLIC

STATE OF NEW YORK )  
COUNTY OF TOMPKINS ) SS:

ON this 23rd day of November 23rd, 1988, before me, the subscriber, personally appeared, ARTHUR F. MILLIGAN SR., to me personally known to be the person described and appointed attorney-in-fact in and by a certain power of attorney executed by VIOLA MILLIGAN dated MAY 17, 1988, and recorded in the Tompkins County Clerk's Office concurrently herewith, and he acknowledged to me that he executed foregoing instrument as the act of the said VIOLA MILLIGAN and that said power of attorney is presently in full force and effect.

*Wesley E. McDermott*  
NOTARY PUBLIC

WESLEY E. McDERMOTT  
Notary Public, State of New York  
No. 55-7816135  
Qualified in Tompkins County  
Term Expires OCT 31, 1990

return: Jeff Coleman  
Rec 14.00  
Stamp 812

Tompkins County, ss: \_\_\_\_\_  
Recorded on the \_\_\_\_\_ Day of \_\_\_\_\_, 1988.  
A.S.S. Clerk, P.M., in Liber 642 of S.S.P.S.  
at page 186 and examined.  
*Wesley E. McDermott* Clerk  
WESLEY E. McDERMOTT  
ATTORNEY AT LAW  
405 N TIOGA ST.  
ITHACA, N.Y. 14850  
(607) 273-8410

9 Agreement to relinquish Life Estate  
Rec 09/12/91  
L 664 P 675

RECEIVED  
REAL ESTATE  
SEP 12 1991  
TRANSFER TAX  
TOMPKINS  
COUNTY

LIBER 664 PAGE 675

6913

AGREEMENT

THIS Agreement made this 10<sup>th</sup> day of September, 1991

by and between

VIOLA MILLIGAN and ARTHUR MILLIGAN, residing at 2665 N. Triphammer Road, Ithaca, New York party, of the first part and

LIANG CHUNG PO and CHING PO MAXIM, residing at 201 Elmwood Avenue, Ithaca, New York, parties of the second part.

WITNESSETH

WHEREAS, the party of the first part conveyed certain premises to the parties of the second part situate on N. Triphammer Road, in the Town of Lansing, County of Tompkins and State of New York by Deed dated the 23rd day of November, 1988 and recorded on the 29th day of November, 1988 in Liber 642 of Deeds at Page 186, and

WHEREAS, the aforesaid Deed reserved a life use by the party of the first part of the residence house and two (2) acres of land that contiguous to said dwelling house, and

WHEREAS, the aforesaid Deed required the party of the first part to continue to pay all utilities, insurance, water and maintenance on said dwelling house, and to maintain the premises subject to the life use in as good condition as of the date of purchase, and

WHEREAS, the parties wish to terminate the party of the first part's life use and the parties of the second part are willing to assume the responsibilities for payment of utilities, insurance, water and maintenance of the said dwelling house, now

WESLEY E. McDERMOTT  
ATTORNEY AT LAW  
405 N. TIOGA ST.  
ITHACA, N. Y. 14850  
607 273-8410



LIBER 684 PAGE 676

THEREFORE, the parties covenant and agree as follows:

1. The party of the first part, Viola Milligan hereby remises, releases and quit claims unto the parties of the second part, Liang Chung Po and Ching Po Maxim all of her right, title and interest as preserved as a life estate in a certain Deed from the party of the first part to the parties of the second part, which said Deed was dated the 23rd day of November, 1988 and recorded on the 29th day of November, 1988 in the Tompkins County Clerk's Office in Liber 624 of Deeds at Page 186, the said life estate being for the use of the dwelling house and two (2) acres of land contiguous to the dwelling house, all as shown on Parcel 2 of a certain survey map entitled "Lands of: Arthur Milligan Sr. and Viola Milligan located: N. Triphammer Road (Military Lot 95) in the Town of Lansing, County of Tompkins, State of New York" drawn by Gary Bruce Davidson and dated the 20th day of October, 1988 which said survey map was filed concurrently in the Tompkins County Clerk's Office with the above Deed.

2. The parties of the second part, Liang Chung Po and Ching Po Maxim agree that in consideration for the surrender of the life estate reserved unto the party of the first part during her lifetime, that from the date of this instrument and henceforth they shall assume all costs in relation to the premises hereby released, to include but not be limited to the costs for all utilities, insurance, water and the maintenance of the house. The parties of the second part further accept the said premises in "as is" condition.

WESLEY E. MCDERMOTT  
 ATTORNEY AT LAW  
 408 N. TIOGA ST.  
 ITHACA, N. Y. 14850  
 (607) 273-6410





LIBER 664 PAGE 678

STATE OF NEW YORK)  
COUNTY OF TOMPKINS) SS:

On this 10th day of September, 1991, before me, the subscriber personally appeared CHING PO MAXIM, to me known and known personally to me to be the same person described in and who executed the foregoing Instrument and she duly acknowledged to me that she executed the same.

*Theresa M. Rimbey*  
NOTARY PUBLIC

THERESA M. RIMBEY  
Notary Public, State of New York  
No. 4800455  
Qualified in Tioga County  
My Commission Expires Feb. 28, 1992

STATE OF NEW YORK) COUNTY OF TOMPKINS) ss.

On this 11th day of September, 1991, before me came ARTHUR MILLIGAN, to me known, and known to me be the individual who executed the foregoing instrument, and known to me to be the individual described in and appointed attorney-in-fact by a certain Power of Attorney executed by VIOLA MILLIGAN, bearing date the 17th day of May, 1988, and was recorded in the Office of the Clerk of the County of Tompkins on November 29, 1988 in Liber 642 of Deeds at page 182, and ARTHUR MILLIGAN acknowledged that he executed the foregoing instrument as the act of said VIOLA MILLIGAN and as her attorney-in-fact, and the said ARTHUR MILLIGAN acknowledged to me that the said Power of Attorney has not been revoked by the death of the said VIOLA MILLIGAN or otherwise, and is in full force and effect.

*Theresa M. Rimbey*  
Notary Public

THERESA M. RIMBEY  
Notary Public, State of New York  
No. 4800455  
Qualified in Tioga County  
My Commission Expires Feb. 28, 1992

WESLEY E. McDERMOTT  
ATTORNEY AT LAW  
405 N. TOGA ST.  
ITHACA, N. Y. 14850  
807-273-8410

Tompkins County, ss:  
Recorded on the 12 Day  
of September 21, 1991 3:41  
o'clock P.M., in Liber 664 of  
Deeds  
at Page 675 and examined.  
Aurora R. Valentich Clerk

10 Deed  
Rec 01/19/99  
L 839 P 1

Section 3, Item d.

FILED 839 PAGE 1

**WARRANTY DEED  
with Lien Covenant**

**THIS INDENTURE** made as of this 1st day of January, Nineteen Hundred and Ninety-Nine,

**BETWEEN** CHING PO and LIANG CHUN PO individually and as joint tenants, both of 201 Elmwood Avenue, Ithaca, NY 14850,  
parties of the first part, and

PO FAMILY LIMITED PARTNERSHIP, a limited partnership formed under the laws of the State of New York with principal offices at 201 Elmwood Avenue, Ithaca, NY 14850,

parties of the second part.

**WITNESSETH.** That the parties of the first part, in consideration of ONE AND NO/100 Dollars (\$1.00) lawful money of the United States, and other good and valuable consideration paid by the parties of the second part, do hereby grant and release unto the parties of the second part, its heirs, distributees and assigns forever,

The transfer herein is not in the nature of a sale; a change in the form of ownership of the real estate is the sole purpose for this conveyance.

**SEE ATTACHED PARCELS (1-5) FOR LEGAL DESCRIPTIONS.**

**TOGETHER** with the appurtenances and all the estate and rights of the parties of the first part in and to said premises,

**TO HAVE AND TO HOLD** the premises herein granted unto the parties of the second part, its heirs, distributees and assigns forever

**AND** the parties of the first part covenants as follows:

**FIRST,** That the parties of the second part shall quietly enjoy the said premises;

**SECOND,** That said parties of the first part will forever **WARRANT** the title to said premises

**THIRD,** That, in Compliance with Sec. 13 of the Lien Law, the grantors will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

**IN WITNESS WHEREOF,** the parties of the first part have hereunto set their hands and

RECEIVED  
\$ 0  
JAN 19 1999  
SALVATORE  
TRANSFER TAX  
TOMPKINS COUNTY

See Misc. Bk. 72 Pg. 28

See Deed R/Rec Inst. # 435556-001



**PARCEL 1**  
**403 College Avenue, City of Ithaca, TP#64-2-29**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Ithaca, County of Tompkins and State of New York and more particularly bounded and described as follows:

BEGINNING at a point in the east line of College Avenue, which point is 60 feet north of the north street line of Dryden Road, being the southwest corner of premises now or formerly of #407 College Avenue Assoc. described by deed recorded in the Tompkins County Clerk's Office in Liber 632 of Deeds at page 889;

thence south 89 degrees 42" East along the north face of the building on the premises herein described 70 feet;

thence south along the east face of the building on the within premises 36.75 feet to a point in the center of an underground telephone box;

thence north 89 degrees 42" West in part along the adjoining walls of the building on the within premises and the building on the south for 26.4 feet;

thence north along the adjoining walls of the two said buildings 1.75 feet;

thence north 89 degrees 42" West along the adjoining walls of the two buildings 43.6 feet to the east street line of College Avenue;

thence continuing along the same course an additional 30 feet to a point in the approximate centerline of College Avenue;

thence north along said centerline of College Avenue 35 feet (parallel to the west wall of the building on the within premises) to a point in said centerline;

thence south 89 degrees 42" East 30 feet to the point and place of beginning.

SUBJECT TO the rights of the public in and to that portion of the premises lying within the bounds of College Avenue.

SUBJECT TO a restriction against retail bookstore operations on the premises as follows: "the said premises shall not be used in part or in whole for the operation of a place of business where books are the main item offered for sale so long as Nebraska Book Co., Inc., its successors owns or operates a retail book store in the Collegetown area of the City of Ithaca, New York, or until January 31, 2010, whichever event occurs first".

TOGETHER WITH the right to use a lane running from the southeast corner of the above described premises southerly to Dryden Road, all as set forth in an agreement dated April 17, 1990 between Robert G. and Mable F. Johnson and the Ithaca Station, Inc. and SUBJECT TO all the obligations, limitations and restrictions set forth therein. The said agreement is recorded in the Tompkins County Clerk's Office in Liber 653 of Deeds at page 1102.

TOGETHER WITH the right to enter onto the property next north, known as 407 College Avenue, as an emergency route for ingress and egress and for access to the building on the above-described premises for fire fighting and other emergency purposes, all as set forth in an agreement dated November 6, 1990 between Ching Po and Liang Chun Po and 407 College Avenue Associates and SUBJECT TO all the conditions, obligations, limitations and restrictions set forth therein. The said agreement was recorded on November 13, 1990 in said Clerk's Office in Liber 658 of Deeds at page 692.

TOGETHER WITH the right to maintain an encroachment of the building on the above-described premises onto the College Avenue right of way, as set forth in an agreement dated December 14, 1990 between Liang Chun Po and Ching Po and the City of Ithaca and SUBJECT TO all conditions, obligations, limitations and restrictions set forth therein. The said agreement was recorded on December 28, 1990 in said Clerk's Office in Liber 659 of Deeds at page 488.

Being the same premises conveyed to Ching Po and Liang Chun Po by two Warranty Deeds one dated June 4, 1990 and recorded June 4, 1990 in said Clerk's Office in Liber 654 of Deeds at page 1032 and the other one dated December 21, 1990 and recorded December 28, 1990 in said Clerk's Office in Liber 659 of Deeds at page 493.

**PARCEL 1.**  
**403 College Avenue, City of Ithaca, TP#64.-2-29**

Being the same premises shown on a survey map entitled "SURVEY MAP NO 403 COLLEGE AVENUE, CITY OF ITHACA, TOMP CO., N.Y." by T.G Miller, P.C., Engineers & surveyors, dated March 14, 1990 a copy of which was recorded in said Clerk's Office in Liber 654 of Deeds at page 1034

The parcel described above is conveyed subject to the following mortgage.

A mortgage by Ching Po and Liang Chun Po to Robert G. Johnson and Mable F. Johnson dated June 4, 1990 and recorded June 4, 1990 in said Clerk's Office in Liber 580 of Mortgages at page 738, to secure \$344,000.00 and interest. Said mortgage was modified and spread by Agreement between Liang Chun Po and Ching Po to Robert G. Johnson and Mabel F. Johnson dated December 21, 1990 and recorded December 28, 1990 in said Clerk's Office in Liber 591 of Mortgages at page 985. Said mortgage was assigned by Assignment by Robert G. & Mable F. Johnson to Tompkins County Trust Company by Assignment dated December 5, 1991 and recorded January 2, 1992 in 61 of Assignments and Releases at page 1. Said mortgage was further modified by an Agreement between Liang Chun Po and Ching Po to Tompkins County Trust Company by Consolidation and Extension Mortgage Agreement dated January 2, 1992 and recorded January 2, 1992 in said Clerk's Office in Liber 611 of Mortgages at page 44, to secure an additional indebtedness of \$384,995.36 for a total indebtedness of \$725,000.00 and interest. The principal balance outstanding as of January 1, 1999 is \$645,888.12.



LIBER 839 PAGE 4

**PARCEL 2**  
**206 College Avenue, City of Ithaca, TP#68-5-11**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Ithaca, County of Tompkins and State of New York, bounded and described as follows:

COMMENCING at the northwest corner of premises reputedly of Howard (see Liber 642 of Deeds at page 407), formerly of Myers (462 Deeds, Page 944), at an existing iron pipe set in the west street line of College Avenue, which pipe is situate northerly along said west street line a distance of 99.80 feet from another pipe set in north line of Cook Street; thence North 69 degrees 33' 48" West a distance of 100.13 feet, along Howard's North line; thence North 20 degrees 55' 21" East a distance of 50 feet along the west line of premises reputedly of Ledger Properties, Inc. (537 Deeds, Page 166) and Beach Avramis (659 Deeds Page 825) to a pipe in a retaining wall; thence South 69 degrees 33' 01" East a distance of 100.00 feet along Beach Avramis premises aforementioned, and the south line of premises reputedly of Beverly Hull (453 Deeds, Page 801) to a pipe on the western line of College Avenue; thence South 20 degrees 46' 28" West along the west line of College Avenue a distance of 49 98 feet to the place of beginning.

The dwelling on the above-described premises is known as No. 206 College Avenue, Ithaca, New York.

Together with all right, title and interest of the grantors lying between the last course above-described and the centerline of College Avenue.

Being the same premises conveyed to Ching Po and Liang Chun Po by Warranty Deed dated January 24, 1992 and recorded January 28, 1992 in the Tompkins County Clerk's Office in Liber 668 of Deeds at page 295.

Being the same premises described in a survey entitled "RESURVEY FOR JOHN; MARY CROWLEY" dated November, 1991 by George C. Schlecht. Said map was filed in the Tompkins County Clerk's Office on January 28, 1992 in Drawer S, Page 241.

The above described parcel is conveyed subject to the following mortgages:

1a. A mortgage given by John M. Crowley and Mary R. Crowley to Elmira Savings and Loan, FA dated August 5, 1987 and recorded August 7, 1987 in the Tompkins County Clerk's Office in Liber 523 of Mortgages at page 739, to secure \$105,000.00. Said mortgage was assumed by the grantors herein by Warranty Deed dated January 24, 1992 and recorded January 28, 1992 in said Clerk's Office in Liber 668 of Deeds at page 295.

1b. A mortgage given by Ching Po and Liang Chun Po to Elmira Savings and Loan, F.A. dated January 24, 1992 and recorded January 28, 1992 in said Clerk's Office in Liber 614 of Mortgages at page 344, to secure \$25,987.42 and interest.

The above stated two mortgages were consolidated into a single lien mortgage by an Consolidation Agreement between Elmira Savings & Loan, F.A. and Ching Po and Liang Chun Po by Agreement dated January 24, 1992 and recorded January 28, 1992 in said Clerk's Office in Liber 614 of Mortgages at page 341 to secure a total indebtedness of \$115,000.00 and interest. The principal balance outstanding as of January 1, 1999 is \$82,627.93.

2. A mortgage given by John Crowley and Mary Crowley to Samuel A. Gould by dated August 5, 1987 and recorded August 7, 1987 in said Clerk's Office in Liber 523 of Mortgages at page 746, to secure \$94,446.42 and interest. Said mortgage was assumed by Warranty Deed by the grantors herein dated January 24, 1992 and recorded January 28, 1992 in said Clerk's Office in Liber 668 of Deeds at page 295. Said mortgage was modified by Loan Modification Agreement between Samuel A. Gould and Liang Chun Po and Ching Po dated January 21, 1992 and recorded January 28, 1992 in said Clerk's Office in Liber 614 of Mortgages at page 340, and subsequently assigned to Shelley L. Gould by Assignment dated and recorded October 7, 1998 in said Clerk's Office in Liber 87 of Assignment and Releases at page 341. The principal balance outstanding as of January 1, 1999 is \$2,443.27.

**PARCEL 3** LIBER 839 PAGE 5  
**202 College Avenue, City of Ithaca, TP#68.-5-13**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Ithaca, County of Tompkins and State of New York, more particularly described as follows:

BEGINNING at the intersection of the west line of College Avenue and the north line of Cook Street, marked by a set pipe,

running thence south 89 degrees 50' west along the north line of Cook Street for a total distance of 100.0 feet to a point marked by a pipe, being the southeast corner of premises owned by Ledger Properties, Inc. (537.166),

running thence north along the east line of Ledger Properties, Inc. (R.O.) for a total distance of 50.0 feet to a point marked by a set pipe, and lying 1.1 feet, more or less, east of a stone wall,

running thence north 89 degrees 50 minutes east along the south line of premises reputedly owned by Howard (642.407) for a total distance of 100.0 feet to a point marked by an existing pipe in the west line of College Avenue,

running thence south 50.0 feet along the west line of College Avenue to the point or place of beginning

The above-described premises are more particularly shown on a survey map entitled "SURVEY MAP NO. 202 COLLEGE AVENUE, CITY OF ITHACA, TOMP. CO., N.Y." dated September 28, 1981 and amended January 3, 1992 by T. G. Miller P.C. Engineers and Surveyors a copy of which was recorded in the Tompkins County Clerk's Office on March 27, 1992 in Liber 672 of Deeds at page 28.

Being the same premises conveyed to Ching Po and Liang Chun Po by Warranty Deed dated March 26, 1992 and recorded March 27, 1992 in said Clerk's Office in Liber 672 of Deeds at page 27.

**The parcel described above is conveyed subject to the following mortgage:**

A mortgage given by Ching Po and Liang Chun Po to Tompkins County Trust Company dated March 26, 1992 and recorded March 27, 1992 in said Clerk's Office in Liber 631 of Mortgages at page 335, to secure \$275,000.00 and interest. Said mortgage was merged and consolidated by Agreement dated April 26, 1994 and recorded April 27, 1994 in said clerk's office in Liber 871 of Mortgages at page 185 to secure an additional indebtedness of \$107,601.63 for a total indebtedness of \$375,000.00 and interest. The principal balance outstanding as of January 1, 1999 is \$335,505.72.



**PARCEL 4**  
**2665 N. Triphammer Road, Town of Lansing, TP#44-1-3.2**

**Parcel A** ←

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York and being a part of Military Lot #95 in said Town more particularly bounded and described as follows: Commencing at a point in the centerline of N. Triphammer Road said point being located Northerly a distance of 2,306 feet along said centerline from it's intersection with the centerline of Cherry Road in said town; thence running south 81 degrees 36' East and passing through a 5/8" rebar with survey cap at 25 feet and running a total distance of 440 feet to a point marked by a 5/8" rebar with survey cap; thence running South 08 degrees 54' West a distance of 246 feet to a point marked by a 5/8" rebar with survey cap; thence running South 81 degrees 36' East 3,227.21 feet to a point marked by a 5/8" rebar with survey cap; thence running North 08 degrees 20' East a distance 432.54 feet to a point marked by an existing iron pipe; thence running North 07 degrees 42' East a distance of 130.26 feet to a point marked by an existing iron pipe, thence running North 81 degrees 27' West a distance of 2,973.66 feet to a point marked by a 5/8" rebar with a survey cap, thence running South 11 degrees 06' West a distance of 16.5 feet to a point marked by a 5/8" rebar with a survey cap; thence running North 82 degrees 35' West a distance of 461.06 feet to a point marked by a 5/8" rebar with survey cap; thence running South 08 degrees 54' West a distance of 186 feet to a point marked by a 5/8" rebar with survey cap, thence running North 82 degrees 35' West and passing through a 5/8" rebar with survey cap at 200 feet and running a total distance of 225 feet to a point in the centerline of N. Triphammer Road; thence South 08 degrees 54' West a distance of 110.34 feet along the centerline of N. Triphammer Road to a point and the place of beginning containing 43.933 acres of land more or less.

SUBJECT TO the following:

1. The rights of the public in and to that portion of the above described premises lying within the bounds of the public highway.
2. A right of way given by Viola Milligan to New York Telephone Company, dated June 5, 1976 and recorded June 8, 1976 in the Tompkins County Clerk's Office in Liber 551 of Deeds at page 852.
3. An easement given by Lester J. Milligan Sr. and Viola Milligan to New York State Electric and Gas Corporation dated May 7, 1968 and recorded in said Clerk's Office in Liber 476 of Deeds at page 861.
4. A right of way given by Nina McGraw and Fred McGraw and Delta H. Knettles and Charles H. Blood to New York State Electric and Gas Corporation dated October 5, 1935 and recorded in said Clerk's Office on March 4, 1936 in Liber 239 of Deeds at page 106.
5. A right of way given by J.P. Knettles to Ovid Electric Company dated August 20, 1919 and recorded May 6, 1919 in said Clerk's Office in Liber 5 of Miscellaneous records at page 83.

Further subject to life use of the residence house and two acres of land contiguous to said dwelling house by Viola Milligan only, provided however that the said use shall be as a residence only and not as rental property or for any other use. The said Viola Milligan shall pay all utilities, insurance, water and maintenance cost, keeping said premises in as good condition as of the date of November 23, 1988.

Being the same premises conveyed to Liang Chun Po and Ching Po Maxim by Warranty Deed dated November 23, 1988 and recorded November 29, 1988 in said Clerk's Office in Liber 642 of Deeds at page 186.

Also being the parcel shown and designated as parcel 2 on a certain survey map entitled Arthur Milligan Sr. and Viola Milligan N. Triphammer (Mil #95) Town of Lansing Tompkins County New York dated October 20, 1988 and drawn by Gary Bruce Davison a copy of which was filed in the Tompkins County Clerk's Office on November 29, 1988 in Drawer L, Page 71.

**Parcel B 2669 N. TRIPHAMMER RD, TW OF LANSING TP# 44-1-2**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York being a part of Military Lot #95 in said Town and more particularly bounded and described as follows: Commencing at a point in the centerline of North

PARCEL 4

( PARCEL B 2669X, Triphammer Road, Town of Lansing, TPA44-1-2, (LANSING) )

Triphammer Road in said Town said point being located Northerly a distance of 2,416.34 feet along said centerline from it's intersection with the centerline of Cherry Road in said Town; thence running North 08 degrees 54' East along the centerline of said North Triphammer Road a distance of 186.00 feet to a point, thence running South 82 degrees 35' East and passing through a point marked by a 5/8" rebar with survey cap at 25 feet and running a total distance of 225 feet to a point marked by a 5/8" rebar with survey cap, thence running south 08 degrees 54' West a distance of 186 feet to a point marked by a 5/8" rebar with survey cap, thence running North 82 degrees 35' West and passing through a point marked by a 5/8" rebar with survey cap at 200 feet and running a total distance of 225 feet to a point in the centerline of North Triphammer Road and the point or place of beginning. The above described parcel contains .96 acres of land more or less.

SUBJECT TO the following to the extent that they affect the above described premises.

1 The rights of the public in and to that portion of the above described premises lying within the bounds of the public highway

2 A right of way given by Arthur Milligan Jr. and Susan Milligan to New York Telephone Company dated May 1, 1976 and recorded in the Tompkins County Clerk's Office on May 21, 1976 in Liber 551 of Deeds at page 372

3 An easement given by Arthur Milligan Jr and Susan Milligan to New York State Electric and Gas Corporation dated May 9, 1968 and recorded on July 30, 1968 in said Clerk's Office in Liber 476 of Deeds at page 859

4. A right of way given by Nina McGraw, Fred McGraw, Delta H. Knottles and Charles H Blood to New York State Electric and Gas Corporation dated October 5, 1935 and recorded March 4, 1936 in said Clerk's Office in Liber 239 of Deeds at page 106.

5 A right of way given by J.P. Knottles, to the Oxid Electric Company dated August 20, 1919 and recorded on May 6, 1919 in said Clerk's Office in Liber 5 of Miscellaneous Records at page 83

Being the same premises conveyed to Liang Chun Po and Ching Po Maxim by Warranty Deed dated November 23, 1988 and recorded November 29, 1988 in said Clerk's Office in Liber 642 of Deeds at page 189

Also being the same premises shown and designated as Parcel 1 on a certain survey map entitled Lands of Arthur Milligan Sr. and Viola Milligan located, North Triphammer Road (Mil Lot #95) Town of Lansing Tompkins County New York dated October 20, 1988 and drawn by Gary Bruce Davison a copy of said map was filed in the Tompkins County Clerk's Office on November 29, 1988 in Drawer L, Page 71.

The above described parcels are conveyed together with all rights of grantors contained in an Option to Purchase between Arthur Milligan, Sr. and Liang Chun Po and Ching Po Maxim dated November 23, 1988 and recorded December 14, 1988 in said Clerk's Office in Liber 33 of Misc. Records at page 171.

Also the above described parcels are conveyed together with and subject to an agreement between Viola Milligan and Arthur Milligan and Liang Chun Po and Ching Po Maxim dated September 10, 1991 and recorded September 12, 1991 in said Clerk's Office in Liber 664 of Deeds at page 675.



**PARCELS**  
**Stormy View Drive, Town of Lansing, TP#41-1-29.2**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York, being Lots Nos. 71, 72, 73, 75 and 76, together with the portion of Sky Acres Drive lying between the westerly line of Stormy View Road and the easterly line of North Triphammer Road, all as shown on a subdivision map entitled "Sky Acres Developer and Builder Alex Cima" map and measurements by Kenneth L. Jones, approved by Howard L. Schlieder, L.S., a copy of which was filed in the Tompkins County Clerk's Office on October 21, 1970 in Town of Lansing 1970 Map Book at Page 11-14.

Subject to easements of record.

The lots set forth above are subject to the following covenants and restrictions which shall run with the land for a period of 20 years from the date hereof.

1. Each of the numbered lots specified above shall be used for residential purposes only and may be improved only with a dwelling containing units for not more than two families, private dwelling garages for personal passenger automobiles and structures incident to private dwellings. Any dwellings constructed on said premises shall have a market value at 1986 of at least \$140,000.00, exclusive of land value. The road shall be used only for road purposes unless and until an approved revision of the above mentioned subdivision map has been obtained and the consent of the owner of lots 74 and 77 as shown on said map has been obtained for relocation or other use of said land as shown as the roadway on said map.
2. No chickens or livestock of any nature or description shall be kept on any of the premises except the usual household pets.
3. The exterior of any dwelling constructed on any of the premises shall be completed within two years of commencement of the improvement.
4. No dwelling shall be moved to or reconstructed on any of the premises.
5. No trailers or mobile homes shall be kept on any of the premises at any time.
6. None of the premises shall be used for storage of any materials, machinery or equipment or supplies of any kind or nature except during the course of construction of any improvement on the land.
7. No building shall be constructed less than 25 feet from the highway right of way line nor closer than 12 feet from the side and rear lot lines.
8. No improvement shall be erected so as to exceed 30 feet in height measured from the average elevation of the ground at the base of the building. This limitation does not apply to chimneys, ventilators or other usual projections.
9. No fence or wall other than the wall of a building shall exceed six feet in height above ground.
10. Modern sanitary septic tank system, approved and installed pursuant to directions of the Tompkins County Department of Health, shall be used.
11. None of the above described lots shall be subdivided.
12. None of the premises shall be used for commercial purposes of any kind or nature. For the purpose of this covenant the giving of instrumental or voice lessons for hire to individuals or small groups shall not be deemed a "commercial purposes."

Being the same premises conveyed to Ching Po and Liang Chun Po by Warranty Deed dated July 12, 1989 and recorded July 19, 1989 in the Tompkins County Clerk's Office in Liber 647 of Deeds at page 938.

Subject to a right of way for ingress and egress over the road denominated "Sky Acres" to and from the portion of Sky Acres Drive that has already been conveyed to the Town of Lansing to and from North Triphammer Road, all as shown on the above mentioned map, for the benefit of the owner or owners of lot 74 and lot 77 as shown on said map unless and until access to said lots is

**PARCEL 5**  
**Stormy View Drive, Town of Lansing, TP#41-1-29.2**

provided in some other manner acceptable to the owners of said lots 74 and 77 and said lot owners have released or otherwise terminated the right of way granted by this paragraph.

TOGETHER WITH that strip or gore of land lying immediately adjacent and to the north of lots 71 and 75 and south of the southerly boundary of premises reputedly of Pinney (see Liber 675 of Deeds at page 150) as more particularly shown on a map, incorporated herein by reference entitled "SURVEY MAP SHOWING LANDS OF CHING AND LANG CHUN PO, NORTH TRIPHAMMER ROAD, TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK" dated April 5, 1993 by T.G. Miller P.C. Engineers and Surveyors to be filed concurrently herewith.



LIBER 839 PAGE 10

seals the day and year first above written.

IN PRESENCE OF

LIANG CHUN PO  
LIANG CHUN PO

Ching Po  
CHING PO

)  
) ss:

On the \_\_\_\_ day of January in the year nineteen hundred ninety nine before me, the undersigned, a Notary Public in and for said \_\_\_\_\_, personally appeared LIANG CHUN PO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

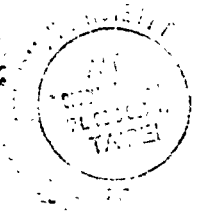
)  
) ss:

On the \_\_\_\_ day of January in the year nineteen hundred ninety nine before me, the undersigned, a notary public in and for said \_\_\_\_\_, personally appeared CHING PO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

Taiwan }  
City of Taipei }  
American Institute in } ss:  
Taiwan, Taipei Office }

On January 11, 1999, before me, the undersigned, personally appeared Liang Chun Po and Ching Po proved to me on the basis of satisfactory evidence to be the person whose name(s) ~~is~~ are subscribed to this instrument, and acknowledged that ~~he~~/she/they executed it.



Thomas J. Meredith  
Thomas J. Meredith  
Special Notary (PL96-8)  
at and duly qualified  
My commission expires August 4, 1999

Funeraria County, ss: 18  
Registered on the \_\_\_\_\_  
\_\_\_\_\_ o'clock P.M., in the  
\_\_\_\_\_ and was  
\_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_  
Return to  
GAMER

11 Deed  
Rec 03/30/01  
L 900 P 17  
Tax Lot 44.-1-3.3

3, Item d.

LIBER 900 PAGE 17

**WARRANTY DEED  
with Lien Covenant**

**THIS INDENTURE** made this 30th day of March, in the year Two Thousand One

**BETWEEN** Po Family Limited Partnership, a limited partnership formed under the laws of the State of New York, with principal offices at 201 Elmwood Avenue, Ithaca, New York 14850,  
party of the first part, and

John F. Young and Susan M. Barnett, husband and wife, residing at 410 Triphammer Road, Ithaca, New York 14850, as tenants by the entirety as to an undivided one-half interest, and James R. Young and Julie R. Young, husband and wife, residing at RD3, Box 149, Port Allegany, PA 16743, as tenants by the entirety as to the remaining undivided one-half interest,  
party of the second part,

**WITNESSETH**, That the party of the first part, in consideration of ONE AND NO/100 Dollars (\$1.00) lawful money of the United States, and other good and valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the survivor(s), his or her distributees and assigns forever.

The premises are more fully described on the attached Schedule A.

**TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

**TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, its heirs, distributees and assigns forever.

**AND** the party of the first part covenants as follows:

**FIRST**, That the party of the second part shall quietly enjoy the said premises;

**SECOND**, That said party of the first part will forever **WARRANT** the title to said premises.

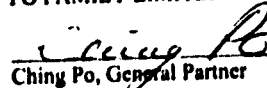
**THIRD**, That, in Compliance with Sec. 13 of the Lien Law, the grantor(s) will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

**IN WITNESS WHEREOF**, the party of the first part have hereunto set its hand and seal the day and year first above written.

**IN PRESENCE OF**

**PO FAMILY LIMITED PARTNERSHIP**

By:

  
Ching Po, General Partner

RECEIVED/FILED  
TOMPKINS COUNTY CLERK  
2001 MAR 30 AM 10:11

STATE OF NEW YORK )  
COUNTY OF TOMPKINS ) ss:

On the 30th day of March in the year 2001, before me, the undersigned, a Notary Public and for said State, personally appeared Ching Po, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

**DAVID A. TYLER**  
Notary Public, State of New York  
No. 4633353  
Qualified in Tompkins County  
Commission Expires Sept 30, 2002

  
NOTARY PUBLIC



SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York, and being a part of Military Lot #95 in said Town, and more particularly bounded and described as follows:

BEGINNING at a point marked by a pin, which point is located the following four courses and distances from the intersection of the center line of North Triphammer Road with the center line of Triphammer Terrace:

1. southerly along North Triphammer Road a chord distance of 2,398 feet, more or less, to a point in the center line of North Triphammer Road;
2. south 02 degrees 11' 35" east 299.59 feet to a point in the center line of North Triphammer Road;
3. south 02 degrees 07' 20" east 342.32 feet to a point in the center line of North Triphammer Road;
4. north 86 degrees 18' 07" east, passing through a pin set in the easterly line of North Triphammer Road at 25 feet, and continuing along this course a total distance of 440.13 feet to the point or place of beginning (which point marks the northwesterly corner of Parcel B and the northeasterly corner of Parcel E as shown on the survey map hereinafter referenced);

*map*

Running thence south 02 degrees 12' 53" east, passing through pins at 186 feet, at a further distance of 118.07 feet, for a total distance on this course of 550.07 feet to an existing pin at the southeasterly corner of premises reputedly of Milligan (643 Deeds at page 417);

Running thence north 87 degrees 17' 07" east along the north line of premises now or formerly of Cornell University (439/452), passing through pins at 300 feet, 600 feet, 900 feet, 1,250 feet, and 1,500 feet, and continuing on this course a total distance of 3,227.40 feet to a pipe;

Running thence north 02 degrees 49' 26" west along the west line of premises reputedly of Hillcrest Associates (643 Deeds at page 1069) a distance of 432.09 feet to a pipe;

Running thence north 03 degrees 33' 46" west along the west line of premises reputedly of Krizek (835 Deeds at page 25) a distance of 130.14 feet to a pipe;

Running thence south 87 degrees 26' 46" west along said premises reputedly of Krizek (835 Deeds at page 25) a distance of 1,812.15 feet to a pipe;

Running thence south 87 degrees 27' 22" west a distance of 1,160.95 feet to a pin (this and the next two courses being along the southerly boundary of other premises of the grantees);

Running thence south 00 degrees 00' 22" east a distance of 16.50 feet to a pin;

Running thence south 86 degrees 18' 07" west a distance of 246.02 feet to the point or place of beginning.

SUBJECT TO the following insofar as they may affect the above-described premises:

1. Right of way given to Ovid Electric Company dated August 20, 1919 and recorded May 6, 1919 in said Clerk's Office in Liber 5 of Miscellaneous Records at page 83.
2. Right of way given to New York State Electric and Gas Corporation dated October 5, 1935 and recorded March 4, 1936 in said Clerk's Office in Liber 239 of Deeds at page 106.
3. Easement to New York State Electric and Gas Corporation dated May 7, 1968 and recorded in said Clerk's Office in Liber 476 of Deeds at page 861.
4. Right of way given to New York Telephone Company dated June 5, 1976 and recorded June 8, 1976 in the Tompkins County Clerk's Office in Liber 551 of Deeds at page 852.

LIBER 900 PAGE 19

The above-described premises are shown as Parcel B on a survey map entitled "Survey Map showing lands of Po Limited Partnership and Young et al., No. 2665 - No. 2677 North Triphammer Road, Town of Lansing, Tompkins County, New York", prepared by T.G. Miller, P.C., Engineers and Surveyors, dated February 13, 2001, a copy of which is intended to be filed concurrently herewith.

The above-described parcel is being expressly conveyed without access (ingress or egress) to North Triphammer Road and there shall be no implied easement of access or easement of necessity over the portion of the premises being retained by the grantor for the benefit of the premises hereby conveyed (the premises being retained being shown on the T.G. Miller survey being filed concurrently herewith as Parcels C and D/E thereon).

BEING A PORTION OF PARCEL 4(A) described and conveyed in the deed from Ching Po and Liang Chun Po to Po Family Limited Partnership dated January 1, 1999 and recorded January 19, 1999 in the Tompkins County Clerk's Office in Liber 839 of Deeds at page 1.

Also being a portion of the parcel shown and designated as Parcel 2 on a certain survey map entitled "Arthur Milligan, Sr., and Viola Milligan, N. Triphammer (Mil #95), Town of Lansing, Tompkins County, New York", dated October 20, 1988, and drawn by Gary Bruce Davison, a copy of which was filed in said Clerk's Office on November 29, 1988 in Drawer L, page 71, said Parcel 2 having been conveyed to Liang Chun Po and Ching Po (formerly) Maxim by deed dated November 23, 1988 and recorded November 29, 1988 in said Clerk's Office in Liber 642 of Deeds at page 186.

RECEIVED  
\$ 604.00  
MAR 3 0 2001 1811  
REAL ESTATE  
TRANSFER TAX  
TOMPKINS COUNTY

Tompkins County, NY  
Recorded on the 30<sup>th</sup> Day  
of March 2001 at 10:14  
o'clock A. M., in Liber 900  
of Deeds at page 17  
and examined.  
Geneva R. Valenti.



**Full Environmental Assessment Form  
Part 1 - Project and Setting**

Section 3, Item d.

**Instructions for Completing Part 1**

**Part 1 is to be completed by the applicant or project sponsor.** Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either “Yes” or “No”. If the answer to the initial question is “Yes”, complete the sub-questions that follow. If the answer to the initial question is “No”, proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

**A. Project and Applicant/Sponsor Information.**

Name of Action or Project: NY Lansing II, LLC - Proposed Commercial Solar Facility		
Project Location (describe, and attach a general location map): North Triphammer Road (County Route 122), Town of Lansing, Tompkins County, NY (Tax Map Nos. 44.-1-1.2 and 44.-1-3.3)		
Brief Description of Proposed Action (include purpose or need): The proposed action includes the development of an approximate 3-megawatt of alternating current (MW AC) ground-mounted solar facility on two (2) tax parcels totaling 66.83± acres located on the east side of North Triphammer Road (County Route 122) (hereinafter the "subject property"). The owner would lease approximately 14.84 acres of the subject property to the applicant (i.e., NY Lansing II, LLC). The area of disturbance for the proposed project would be 16.76± acres. The solar facility would be situated along the southern portion of the southern tax parcel (44.-1-3.3). The proposed action would include the installation of solar modules with a maximum height of 15 feet, an eight (8)-foot-high deer fence around the proposed solar facility, one (1) concrete equipment pad to house electrical equipment (i.e., one [1] inverter and two [2] transformers) and electric utility lines to connect the solar panels to the existing distribution power line along the west side of the subject property. The proposed action would also include the construction of a gravel access road on the northern tax parcel (44.-1-1.2) from North Triphammer Road (County Route 122). It is noted that the project area would be seeded with a northeast solar pollinator mix. All solar power generated by the proposed action would be sold as Community Distributed Generation. This program allows subscribed participants to share the benefits of clean energy production. According to the applicant, a mix of residential and commercial customers, specifically New York State Electric and Gas (NYSEG) customers, would be able to receive a share of the solar power.		
Name of Applicant/Sponsor: NY Lansing I, LLC attn: Mollie Messenger		Telephone: 646-998-6495
		E-Mail: mollie.messenger@delawariversolar.com
Address: P.O. Box 384		
City/PO: Callicoon	State: NY	Zip Code: 12783
Project Contact (if not same as sponsor; give name and title/role):		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor): Jessie Young		Telephone: 607-533-0346
		E-Mail: jessie@youngbros.com
Address: 3105 North Triphammer Road Suite 1		
City/PO: Lansing	State: NY	Zip Code: 14882

**B. Government Approvals**

**B. Government Approvals, Funding, or Sponsorship.** (“Funding” includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Counsel, Town Board, <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No or Village Board of Trustees		
b. City, Town or Village Planning Board or Commission <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Town of Lansing Planning Board - Site Plan Approval and Decommissioning Plan Approval	TBD
c. City, Town or Village Zoning Board of Appeals <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Town of Lansing Zoning Board of Appeals - Use Variance	April 2024
d. Other local agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Town of Lansing Code Enforcement Officer - Building Permit	TBD
e. County agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Tompkins County Department of Planning and Sustainability - GML §239m Referral Tompkins County Highway Department - Highway Work Permit	TBD
f. Regional agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
g. State agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	NYSDEC - SPDES General Permit for Construction Activity NYSERDA - Partial Funding (NY-Sun Incentive Program)	TBD
h. Federal agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
iii. Is the project site within a Coastal Erosion Hazard Area?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**C. Planning and Zoning**

**C.1. Planning and zoning actions.**

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed?  Yes  No

- If Yes, complete sections C, F and G.
- If No, proceed to question C.2 and complete all remaining sections and questions in Part 1

**C.2. Adopted land use plans.**

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located?  Yes  No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located?  Yes  No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?)  Yes  No

If Yes, identify the plan(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan?  Yes  No

If Yes, identify the plan(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**C.3. Zoning**

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a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance.  Yes  No  
If Yes, what is the zoning classification(s) including any applicable overlay district?  
The subject property is located within the Residential - Moderate Density (R2) Zoning District.

b. Is the use permitted or allowed by a special or conditional use permit?  Yes  No

c. Is a zoning change requested as part of the proposed action?  Yes  No  
If Yes,  
i. What is the proposed new zoning for the site? \_\_\_\_\_

**C.4. Existing community services.**

a. In what school district is the project site located? Ithaca City School District

b. What police or other public protection forces serve the project site?  
Tompkins County Sheriff's Department

c. Which fire protection and emergency medical services serve the project site?  
Lansing Fire Department provides both fire protection and emergency medical services.

d. What parks serve the project site?  
N/A - the proposed use includes a commercial solar facility.

**D. Project Details**

**D.1. Proposed and Potential Development**

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Commercial solar energy facility

b. a. Total acreage of the site of the proposed action? \_\_\_\_\_ 66.83± acres  
b. Total acreage to be physically disturbed? \_\_\_\_\_ 16.76± acres  
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? \_\_\_\_\_ 66.83± acres (The property owner would lease 14.84± acres of the subject property to the applicant.)

c. Is the proposed action an expansion of an existing project or use?  Yes  No  
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % \_\_\_\_\_ Units: \_\_\_\_\_

d. Is the proposed action a subdivision, or does it include a subdivision?  Yes  No  
If Yes,  
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types) \_\_\_\_\_  
ii. Is a cluster/conservation layout proposed?  Yes  No  
iii. Number of lots proposed? \_\_\_\_\_  
iv. Minimum and maximum proposed lot sizes? Minimum \_\_\_\_\_ Maximum \_\_\_\_\_

e. Will the proposed action be constructed in multiple phases?  Yes  No  
i. If No, anticipated period of construction: \_\_\_\_\_ 5 months  
ii. If Yes:  
• Total number of phases anticipated \_\_\_\_\_  
• Anticipated commencement date of phase 1 (including demolition) \_\_\_\_\_ month \_\_\_\_\_ year  
• Anticipated completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year  
• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

f. Does the project include new residential uses?

Yes  No  
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If Yes, show numbers of units proposed.

	<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>	<u>Multiple Family (four or more)</u>
Initial Phase	_____	_____	_____	_____
At completion	_____	_____	_____	_____
of all phases	_____	_____	_____	_____

g. Does the proposed action include new non-residential construction (including expansions)?

Yes  No

If Yes,

- i. Total number of structures 6,048± solar modules
- ii. Dimensions (in feet) of largest proposed structure: 15± feet height; 3.5± feet width; and 7.9± feet length
- iii. Approximate extent of building space to be heated or cooled: \_\_\_\_\_ 0 square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage?

Yes  No

If Yes,

- i. Purpose of the impoundment: \_\_\_\_\_
- ii. If a water impoundment, the principal source of the water:  Ground water  Surface water streams  Other specify: \_\_\_\_\_
- iii. If other than water, identify the type of impounded/contained liquids and their source. \_\_\_\_\_

iv. Approximate size of the proposed impoundment. Volume: \_\_\_\_\_ million gallons; surface area: \_\_\_\_\_ acres

v. Dimensions of the proposed dam or impounding structure: \_\_\_\_\_ height; \_\_\_\_\_ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): \_\_\_\_\_

## D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)

Yes  No

If Yes:

- i. What is the purpose of the excavation or dredging? \_\_\_\_\_
- ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?
  - Volume (specify tons or cubic yards): \_\_\_\_\_
  - Over what duration of time? \_\_\_\_\_
- iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. \_\_\_\_\_

iv. Will there be onsite dewatering or processing of excavated materials?

Yes  No

If yes, describe. \_\_\_\_\_

v. What is the total area to be dredged or excavated? \_\_\_\_\_ acres

vi. What is the maximum area to be worked at any one time? \_\_\_\_\_ acres

vii. What would be the maximum depth of excavation or dredging? \_\_\_\_\_ feet

viii. Will the excavation require blasting?

Yes  No

ix. Summarize site reclamation goals and plan: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area?

Yes  No

If Yes:

- i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): The unregulated wetland areas located on the southern portions of the subject property would be disturbed as part of the proposed action.



ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet of \_\_\_\_\_

The proposed action would involve excavation and fill associated with the construction of the proposed access road. Excavation would be approximately 0.36 acre and fill material would be approximately 0.59 acres. The proposed access road would be built upon a portion of the existing wetland vegetation. Grubbing and/or clearing would be performed as necessary for larger wooded/dense vegetated areas within the wetlands.

iii. Will the proposed action cause or result in disturbance to bottom sediments?  Yes  No

If Yes, describe: The proposed action would require regrading/excavation for the construction of the access road.

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation?  Yes  No

If Yes:

- acres of aquatic vegetation proposed to be removed: 0.95± acre to be built upon and/or removed
- expected acreage of aquatic vegetation remaining after project completion: 12.76± acres
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): Construction of the proposed access road
- proposed method of plant removal: Mechanical clearing and grubbing, as necessary.
- if chemical/herbicide treatment will be used, specify product(s): None

v. Describe any proposed reclamation/mitigation following disturbance: \_\_\_\_\_

Erosion and sedimentation control measures would be undertaken prior to and during construction.

c. Will the proposed action use, or create a new demand for water?  Yes  No

If Yes:

i. Total anticipated water usage/demand per day: \_\_\_\_\_ gallons/day

ii. Will the proposed action obtain water from an existing public water supply?  Yes  No

If Yes:

- Name of district or service area: \_\_\_\_\_
- Does the existing public water supply have capacity to serve the proposal?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No
- Do existing lines serve the project site?  Yes  No

iii. Will line extension within an existing district be necessary to supply the project?  Yes  No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_
- Source(s) of supply for the district: \_\_\_\_\_

iv. Is a new water supply district or service area proposed to be formed to serve the project site?  Yes  No

If Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- Proposed source(s) of supply for new district: \_\_\_\_\_

v. If a public water supply will not be used, describe plans to provide water supply for the project: \_\_\_\_\_

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: \_\_\_\_\_ gallons/minute.

d. Will the proposed action generate liquid wastes?  Yes  No

If Yes:

i. Total anticipated liquid waste generation per day: \_\_\_\_\_ gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): \_\_\_\_\_

iii. Will the proposed action use any existing public wastewater treatment facilities?  Yes  No

If Yes:

- Name of wastewater treatment plant to be used: \_\_\_\_\_
- Name of district: \_\_\_\_\_
- Does the existing wastewater treatment plant have capacity to serve the project?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No

- Do existing sewer lines serve the project site?
- Will a line extension within an existing district be necessary to serve the project?

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site?  Yes  No

If Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- What is the receiving water for the wastewater discharge? \_\_\_\_\_

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: \_\_\_\_\_

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction?  Yes  No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

\_\_\_\_\_ Square feet or 0.01± acres (impervious surface)

\_\_\_\_\_ Square feet or 66.83± acres (parcel size)

ii. Describe types of new point sources. Solar panels, concrete equipment pad, footings and gravel access road

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

The proposed design would include waters bars and five (5) rain gardens. Stormwater runoff would flow towards the rain gardens to the south of the solar facility, and to the surrounding on-site wetland areas which is where stormwater runoff currently flows.

- If to surface waters, identify receiving water bodies or wetlands: \_\_\_\_\_  
Stormwater runoff would flow towards the rain gardens to the south of the solar facility, and to the surrounding on-site wetland areas which is where stormwater runoff currently flows.

• Will stormwater runoff flow to adjacent properties?  Yes  No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater?  Yes  No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations?  Yes  No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit?  Yes  No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year)  Yes  No

ii. In addition to emissions as calculated in the application, the project will generate:

- \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide (CO<sub>2</sub>)
- \_\_\_\_\_ Tons/year (short tons) of Nitrous Oxide (N<sub>2</sub>O)
- \_\_\_\_\_ Tons/year (short tons) of Perfluorocarbons (PFCs)
- \_\_\_\_\_ Tons/year (short tons) of Sulfur Hexafluoride (SF<sub>6</sub>)
- \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)
- \_\_\_\_\_ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)



h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)?

Yes  No  
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If Yes:

- i. Estimate methane generation in tons/year (metric): \_\_\_\_\_
- ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): \_\_\_\_\_

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations?  Yes  No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

\_\_\_\_\_

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services?  Yes  No

If Yes:

- i. When is the peak traffic expected (Check all that apply):  Morning  Evening  Weekend  
 Randomly between hours of \_\_\_\_\_ to \_\_\_\_\_.
- ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): \_\_\_\_\_

iii. Parking spaces: Existing \_\_\_\_\_ Proposed \_\_\_\_\_ Net increase/decrease \_\_\_\_\_

iv. Does the proposed action include any shared use parking?  Yes  No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

\_\_\_\_\_

vi. Are public/private transportation service(s) or facilities available within 1/2 mile of the proposed site?  Yes  No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles?  Yes  No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes?  Yes  No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy?  Yes  No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: \_\_\_\_\_

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other):

\_\_\_\_\_

iii. Will the proposed action require a new, or an upgrade, to an existing substation?  Yes  No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: \_\_\_\_\_ 8:00am-6:00pm
- Saturday: \_\_\_\_\_ 8:00am-6:00pm
- Sunday: \_\_\_\_\_ N/A
- Holidays: \_\_\_\_\_ N/A

ii. During Operations:

- Monday - Friday: \_\_\_\_\_ 24/7\*
- Saturday: \_\_\_\_\_ 24/7\*
- Sunday: \_\_\_\_\_ 24/7\*
- Holidays: \_\_\_\_\_ 24/7\*

\*The site would not be occupied 24/7. It would be remotely monitored and inspections would occur as needed to ensure a properly maintained site.

m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both?

Yes  No

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If yes:

i. Provide details including sources, time of day and duration:

Temporary noise during construction would be expected. Construction would occur during non-sensitive hours (i.e., 8:00am-6:00pm Monday through Saturday with no construction on Sundays or holidays).

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen?

Yes  No

Describe: The project area would result in the clearing of 7.21± acres of woodland for the proposed solar facility. However, upon implementation of the proposed action, 20.41± acres of woodland would remain.

n. Will the proposed action have outdoor lighting?

Yes  No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen?

Yes  No

Describe:

o. Does the proposed action have the potential to produce odors for more than one hour per day?

Yes  No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage?

Yes  No

If Yes:

i. Product(s) to be stored

ii. Volume(s) per unit time (e.g., month, year)

iii. Generally, describe the proposed storage facilities:

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation?

Yes  No

If Yes:

i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices?

Yes  No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)?

Yes  No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

• Construction: 0.1 tons per month (unit of time)

• Operation : 0 tons per (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

• Construction: According to the applicant, waste would consist of office waste and cardboard items from deliveries, which would be recycled to the maximum extent practicable.

• Operation: N/A

iii. Proposed disposal methods/facilities for solid waste generated on-site:

• Construction: A refuse container would be placed on-site during construction and would be emptied by a licensed hauler as needed.

• Operation: N/A



s. Does the proposed action include construction or modification of a solid waste management facility?  Yes  No

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If Yes:

- i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): \_\_\_\_\_
- ii. Anticipated rate of disposal/processing:
  - \_\_\_\_\_ Tons/month, if transfer or other non-combustion/thermal treatment, or
  - \_\_\_\_\_ Tons/hour, if combustion or thermal treatment
- iii. If landfill, anticipated site life: \_\_\_\_\_ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste?  Yes  No

If Yes:

- i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: \_\_\_\_\_
- ii. Generally describe processes or activities involving hazardous wastes or constituents: \_\_\_\_\_
- iii. Specify amount to be handled or generated \_\_\_\_\_ tons/month
- iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: \_\_\_\_\_
- v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility?  Yes  No

If Yes: provide name and location of facility: \_\_\_\_\_

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: \_\_\_\_\_

**E. Site and Setting of Proposed Action**

**E.1. Land uses on and surrounding the project site**

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

- Urban  Industrial  Commercial  Residential (suburban)  Rural (non-farm)
- Forest  Agriculture  Aquatic  Other (specify): Institutional (NYS Department of Transportation Sub-Residency Facility)

ii. If mix of uses, generally describe:

The subject property is currently agricultural land with forested areas. The surrounding area includes residential, commercial and institutional land uses, as well as forested areas.

b. Land uses and covertypes on the project site.

Land use or Covertypes	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	0	0.01±	+0.01
• Forested	27.62±	20.41±	-7.21
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	0	0	0
• Agricultural (includes active orchards, field, greenhouse etc.)	25.50±	16.90±	-8.60
• Surface water features (lakes, ponds, streams, rivers, etc.)	0	0	0
• Wetlands (freshwater or tidal)	13.71±	12.76±	-0.95
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: Landscaping/seeded areas (inclusive of rain gardens) and gravel access road*	0	16.75±	+16.75

\*Upon implementation of the proposed action, 1.84± acres of gravel would be installed for the proposed access road.

c. Is the project site presently used by members of the community for public recreation?

Yes  No

i. If Yes: explain: \_\_\_\_\_

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d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site?

Yes  No

If Yes,

i. Identify Facilities:

\_\_\_\_\_

e. Does the project site contain an existing dam?

Yes  No

If Yes:

i. Dimensions of the dam and impoundment:

- Dam height: \_\_\_\_\_ feet
- Dam length: \_\_\_\_\_ feet
- Surface area: \_\_\_\_\_ acres
- Volume impounded: \_\_\_\_\_ gallons OR acre-feet

ii. Dam's existing hazard classification: \_\_\_\_\_

iii. Provide date and summarize results of last inspection: \_\_\_\_\_

\_\_\_\_\_

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility?

Yes  No

If Yes:

i. Has the facility been formally closed?

Yes  No

- If yes, cite sources/documentation: \_\_\_\_\_

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:

\_\_\_\_\_

iii. Describe any development constraints due to the prior solid waste activities: \_\_\_\_\_

\_\_\_\_\_

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste?

Yes  No

If Yes:

i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

\_\_\_\_\_

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site?

Yes  No

If Yes:

i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply:  Yes  No

\_\_\_\_\_

Yes – Spills Incidents database Provide DEC ID number(s): \_\_\_\_\_

Yes – Environmental Site Remediation database Provide DEC ID number(s): \_\_\_\_\_

Neither database

ii. If site has been subject of RCRA corrective activities, describe control measures: \_\_\_\_\_

\_\_\_\_\_

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database?  Yes  No

If yes, provide DEC ID number(s): \_\_\_\_\_

iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

\_\_\_\_\_

\_\_\_\_\_



v. Is the project site subject to an institutional control limiting property uses?  Yes  No

- If yes, DEC site ID number: \_\_\_\_\_
- Describe the type of institutional control (e.g., deed restriction or easement): \_\_\_\_\_
- Describe any use limitations: \_\_\_\_\_
- Describe any engineering controls: \_\_\_\_\_
- Will the project affect the institutional or engineering controls in place?  Yes  No
- Explain: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**E.2. Natural Resources On or Near Project Site**

a. What is the average depth to bedrock on the project site? \_\_\_\_\_ 3± feet below grade surface (bgs)

b. Are there bedrock outcroppings on the project site?  Yes  No  
 If Yes, what proportion of the site is comprised of bedrock outcroppings? \_\_\_\_\_ %

c. Predominant soil type(s) present on project site:

Langford channery silt loam, 2-8% slopes (LaB)	26 %
Tuller channery silt loam, 0-6% slopes (TeA)	24 %
Lordstown channery silt loam, 5-15% slopes (LnC)	21 %

d. What is the average depth to the water table on the project site? Average: \_\_\_\_\_ 20± feet bgs\*

e. Drainage status of project site soils:

<input checked="" type="checkbox"/> Well Drained:	34 % of site
<input checked="" type="checkbox"/> Moderately Well Drained:	26 % of site
<input checked="" type="checkbox"/> Poorly Drained	40 % of site

f. Approximate proportion of proposed action site with slopes:

<input checked="" type="checkbox"/> 0-10%:	84 % of site
<input checked="" type="checkbox"/> 10-15%:	16 % of site
<input type="checkbox"/> 15% or greater:	_____ % of site

g. Are there any unique geologic features on the project site?  Yes  No  
 If Yes, describe: \_\_\_\_\_  
 \_\_\_\_\_

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)?  Yes  No

ii. Do any wetlands or other waterbodies adjoin the project site?  Yes  No

If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency?  Yes  No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Lakes or Ponds: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Wetlands: Name Federal Waters \_\_\_\_\_ Approximate Size \*See below \_\_\_\_\_
- Wetland No. (if regulated by DEC) \_\_\_\_\_

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies?  Yes  No  
 If yes, name of impaired water body/bodies and basis for listing as impaired: \_\_\_\_\_  
 \_\_\_\_\_

i. Is the project site in a designated Floodway?  Yes  No

j. Is the project site in the 100-year Floodplain?  Yes  No

k. Is the project site in the 500-year Floodplain?  Yes  No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer?  Yes  No  
 If Yes:  
 i. Name of aquifer: \_\_\_\_\_

\*There are areas on the eastern portion of the subject property with perched water at approximately 2 feet bgs and 6 feet bgs.  
 \*The EAF Mapper indicates the presence of federal waterbodies on or adjoining the subject property. Review of the U.S. Fish and Wildlife Services National Wetlands Inventory (NWI) Mapper indicates that a 13.14-acre Freshwater Forested/Shrub Wetland habitat classified as PFO1/4E is located on the southeastern portion of the southern tax parcel (44.-1-3.3) and adjoining area. It is noted that review of the NYSDEC Environmental Resource Mapper indicates that there are no state-regulated freshwater wetlands or streams located on or adjacent to the subject property.

<p>m. Identify the predominant wildlife species that occupy or use the project site: _____</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Rabbits _____</td> <td style="width: 33%;">White-tailed deer _____</td> <td style="width: 33%;"></td> </tr> <tr> <td>Grey squirrels _____</td> <td>Field rodents _____</td> <td></td> </tr> <tr> <td>Raccoons _____</td> <td></td> <td></td> </tr> </table>	Rabbits _____	White-tailed deer _____		Grey squirrels _____	Field rodents _____		Raccoons _____			<div style="border: 1px solid black; padding: 2px; display: inline-block;">Section 3, Item d.</div>
Rabbits _____	White-tailed deer _____									
Grey squirrels _____	Field rodents _____									
Raccoons _____										
<p>n. Does the project site contain a designated significant natural community? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Describe the habitat/community (composition, function, and basis for designation): _____</p> <p style="margin-left: 20px;">ii. Source(s) of description or evaluation: _____</p> <p style="margin-left: 20px;">iii. Extent of community/habitat:</p> <ul style="list-style-type: none"> <li>• Currently: _____ acres</li> <li>• Following completion of project as proposed: _____ acres</li> <li>• Gain or loss (indicate + or -): _____ acres</li> </ul>										
<p>o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Species and listing (endangered or threatened): _____</p> <p>_____</p> <p>_____</p>										
<p>p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Species and listing: _____</p> <p>_____</p>										
<p>q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If yes, give a brief description of how the proposed action may affect that use: <u>According to the applicant, there may be areas on or near the subject property that are occasionally used for hunting. Upon implementation of the proposed action, hunting could still occur on or near the subject property; however, no future hunting would occur on the solar project site.</u></p>										
<p><b>E.3. Designated Public Resources On or Near Project Site</b></p>										
<p>a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes, provide county plus district name/number: _____</p>										
<p>b. Are agricultural lands consisting of highly productive soils present? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p style="margin-left: 20px;">i. If Yes: acreage(s) on project site? <u>The subject property contains 17.5± acres of Soil Group 3; however, only 2.21± acres would be disturbed as part of the proposed action.</u></p> <p style="margin-left: 20px;">ii. Source(s) of soil rating(s): <u>United State Department of Agriculture Web Soil Survey and NYSERDA 2022 Soils Data</u></p>										
<p>c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature</p> <p style="margin-left: 20px;">ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____</p> <p>_____</p> <p>_____</p>										
<p>d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p style="margin-left: 20px;">i. CEA name: _____</p> <p style="margin-left: 20px;">ii. Basis for designation: _____</p> <p style="margin-left: 20px;">iii. Designating agency and date: _____</p>										



e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commission Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?  Yes  No

If Yes:

i. Nature of historic/archaeological resource:  Archaeological Site  Historic Building or District

ii. Name: \_\_\_\_\_

iii. Brief description of attributes on which listing is based: \_\_\_\_\_

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?  Yes  No

g. Have additional archaeological or historic site(s) or resources been identified on the project site?  Yes  No

If Yes:

i. Describe possible resource(s): \_\_\_\_\_

ii. Basis for identification: \_\_\_\_\_

h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource?  Yes  No

If Yes:

i. Identify resource: Lansing Town Park; Sunset Park; Stewart Park; Allen H. Treman State Marine Park; Cornell Botanical Gardens; Thompson Park; Conway Park; Strawberry Fields Park

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): Town Park; Town Park; Town Park; State Park; Botanical Gardens; Village Park; Village Park; Village Park

iii. Distance between project and resource: varying distances within 5 miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?  Yes  No

If Yes:

i. Identify the name of the river and its designation: \_\_\_\_\_

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666?  Yes  No

**F. Additional Information**

Attach any additional information which may be needed to clarify your project.

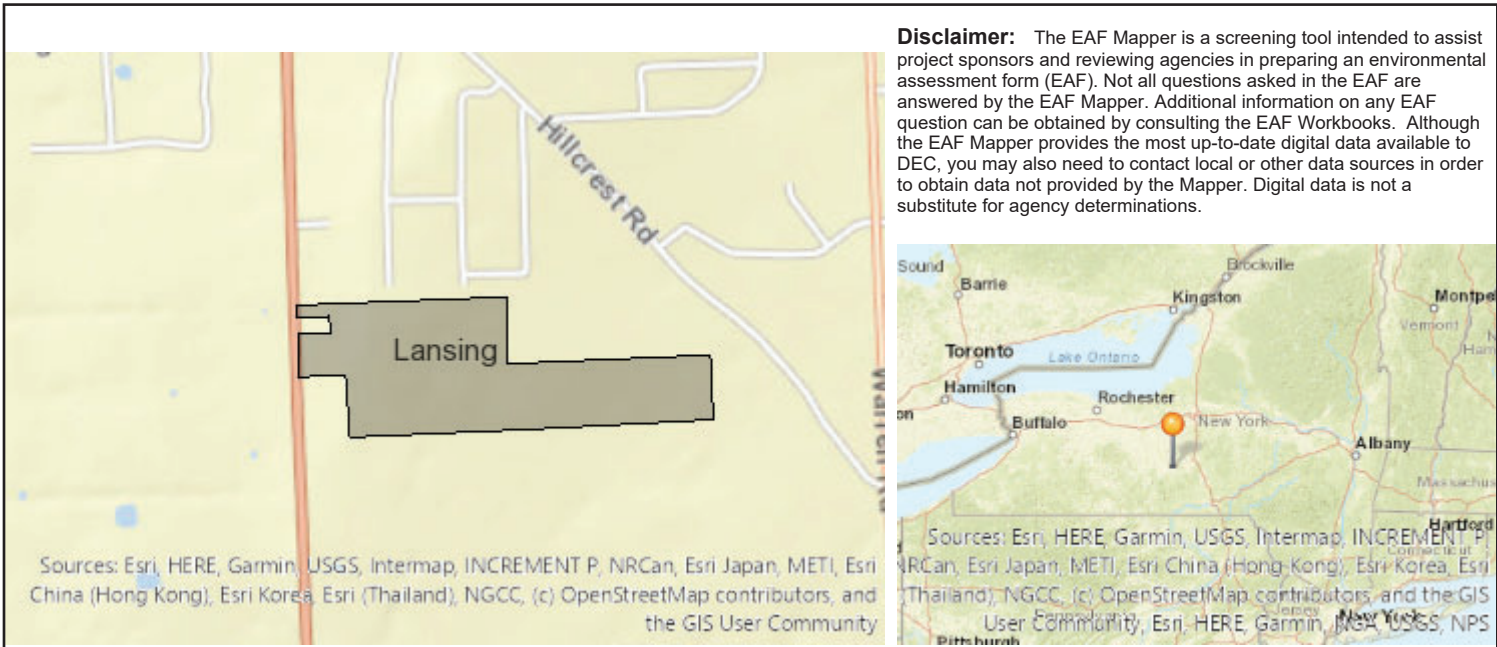
If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

**G. Verification**

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name NY Lansing II, LLC  
Attn: P.W. Grosser Consulting, Inc. as Environmental Consultant Date 4/5/2024

Signature  Title Sr. Environmental Planner/Project Manager  
 Katelyn Kaim, AICP

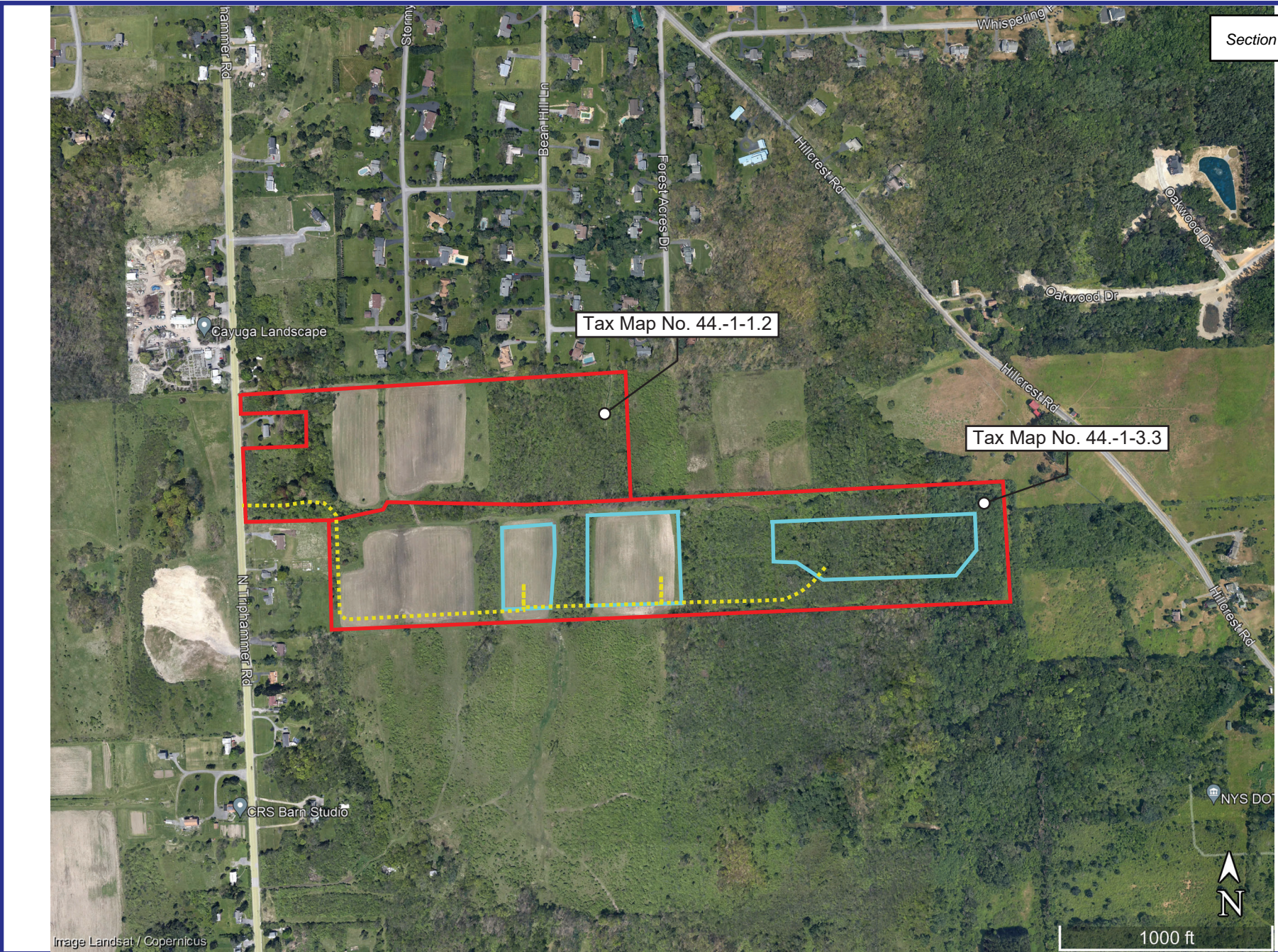


B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.2.j. [100 Year Floodplain]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.2.k. [500 Year Floodplain]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.2.l. [Aquifers]	No



E.2.n. [Natural Communities]	No	
E.2.o. [Endangered or Threatened Species]	No	Section 3, Item d.
E.2.p. [Rare Plants or Animals]	No	
E.3.a. [Agricultural District]	No	
E.3.c. [National Natural Landmark]	No	
E.3.d [Critical Environmental Area]	No	
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.	
E.3.f. [Archeological Sites]	No	
E.3.i. [Designated River Corridor]	No	





- Subject Property
- Proposed Access Road
- Proposed Project Area (approximate)

All boundaries are approximate  
 Source: Google Earth, 2024

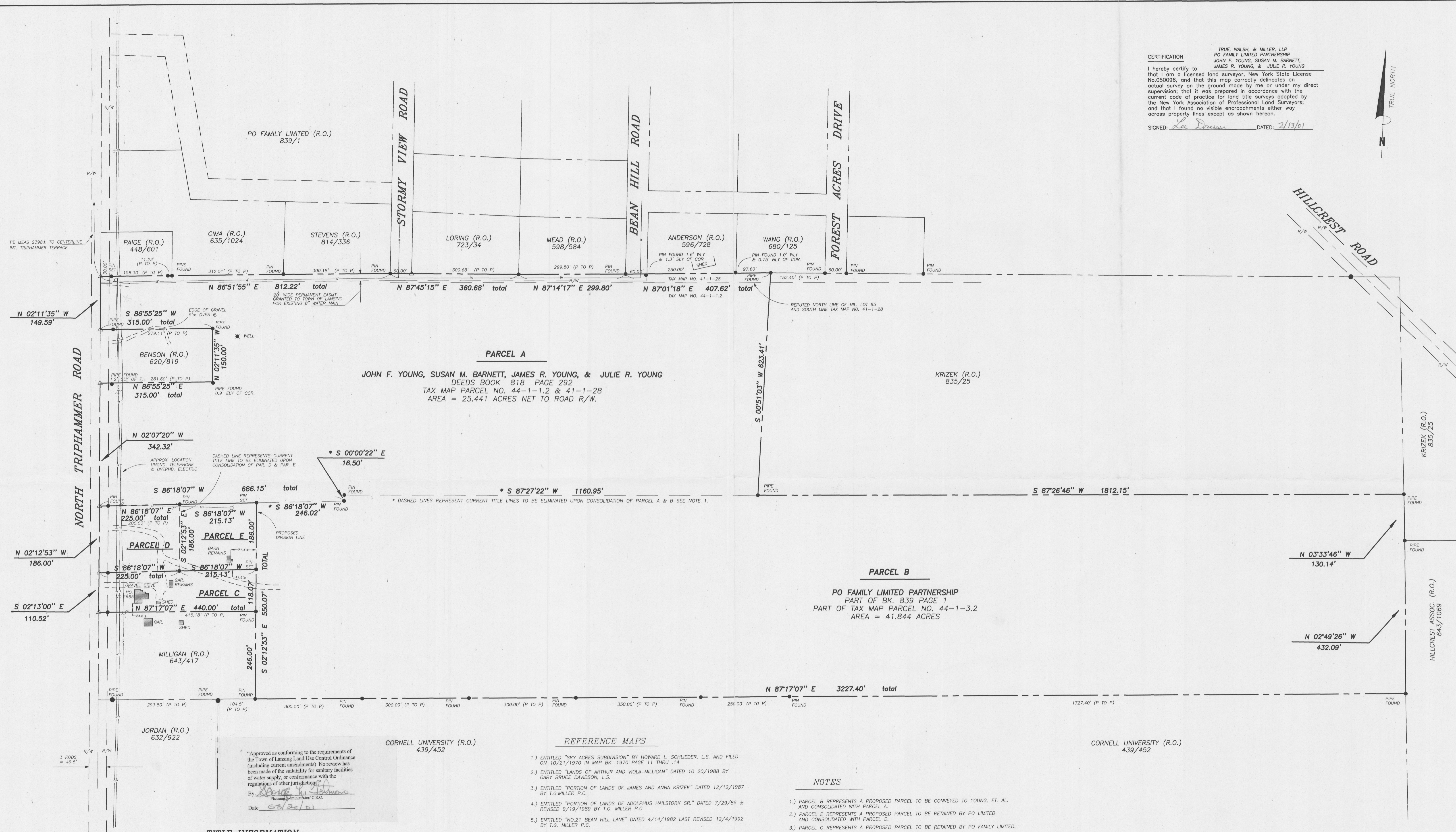
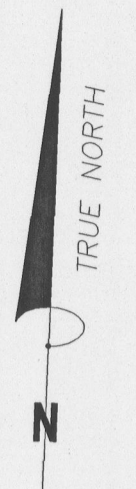
**Site Location Map**  
 NY Lansing II, LLC  
 North Triphammer Road  
 Town of Lansing, Tompkins County, NY



P.W. GROSSER CONSULTING, INC.  
 630 Johnson Ave., Suite 7  
 Bohemia, NY 11716  
 Ph: 631-589-6353 • Fax: 631-589-8705  
[pwgc@pwgrosser.com](mailto:pwgc@pwgrosser.com)



CERTIFICATION  
 TRUE, WALSH, & MILLER, LLP  
 PO FAMILY LIMITED PARTNERSHIP  
 JOHN F. YOUNG, SUSAN M. BARNETT,  
 JAMES R. YOUNG, & JULIE R. YOUNG  
 I hereby certify to  
 that I am a licensed land surveyor, New York State License  
 No. 050096, and that this map correctly delineates an  
 actual survey on the ground made by me or under my direct  
 supervision; that it was prepared in accordance with the  
 current code of practice for land title surveys adopted by  
 the New York Association of Professional Land Surveyors;  
 and that I found no visible encroachments either way  
 across property lines except as shown hereon.  
 SIGNED: *Lee Dresser* DATED: 2/13/01



**TITLE INFORMATION**

<b>PARCEL A</b> JOHN F. YOUNG, SUSAN M. BARNETT, JAMES R. YOUNG, & JULIE R. YOUNG DEEDS BOOK 818 PAGE 292 TAX MAP PARCEL NO. 44-1-1.2 & 41-1-28 AREA = 25.441 ACRES NET TO ROAD R/W.	<b>PARCEL B</b> PO FAMILY LIMITED PARTNERSHIP PART OF BK. 839 PAGE 1 PART OF TAX MAP PARCEL NO. 44-1-3.2 AREA = 41.844 ACRES
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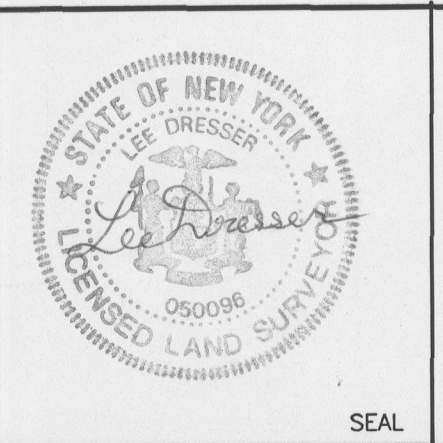
<b>PARCEL C</b> PO FAMILY LIMITED PARTNERSHIP PART OF BK. 839 PAGE 1 PART OF TAX MAP PARCEL NO. 44-1-3.2 1.09 ACRES NET TO ROAD R/W.	<b>PARCEL D</b> PO FAMILY LIMITED PARTNERSHIP PART OF BK. 839 PAGE 1 TAX MAP PARCEL NO. 44-1-2 0.855 ACRES NET TO ROAD R/W.	<b>PARCEL E</b> PO FAMILY LIMITED PARTNERSHIP PART OF BK. 839 PAGE 1 PART OF TAX MAP PARCEL NO. 44-1-3.2 AREA = 0.92 ACRES
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- REFERENCE MAPS**
- 1.) ENTITLED "SKY ACRES SUBDIVISION" BY HOWARD L. SCHLIEDER, L.S. AND FILED ON 10/21/1970 IN MAP BK. 1970 PAGE 11 THRU 14
  - 2.) ENTITLED "LANDS OF ARTHUR AND VIOLA MILLIGAN" DATED 10/20/1988 BY GARY BRUCE DAVIDSON, L.S.
  - 3.) ENTITLED "PORTION OF LANDS OF JAMES AND ANNA KRIZEK" DATED 12/12/1987 BY T.G. MILLER P.C.
  - 4.) ENTITLED "PORTION OF LANDS OF ADOLPHUS HAILSTORK SR." DATED 7/29/86 & REVISED 9/19/1989 BY T.G. MILLER P.C.
  - 5.) ENTITLED "NO. 21 BEAN HILL LANE" DATED 4/14/1982 LAST REVISED 12/4/1992 BY T.G. MILLER P.C.
  - 6.) ENTITLED "NO. 2677 NORTH TRIPHAMMER ROAD" DATED 11/26/1990 BY HOWARD R. SCHLIEDER, L.S.
  - 7.) ENTITLED "SURVEY FOR ADOLPHUS C. HAILSTORK" DATED 4/23/1940 BY CARL CRANDALL C.E.
- SAID MAPS BEING ON FILE IN THE TOMPKINS COUNTY CLERKS OFFICE.

- NOTES**
- 1.) PARCEL B REPRESENTS A PROPOSED PARCEL TO BE CONVEYED TO YOUNG, ET. AL. AND CONSOLIDATED WITH PARCEL A.
  - 2.) PARCEL E REPRESENTS A PROPOSED PARCEL TO BE RETAINED BY PO LIMITED AND CONSOLIDATED WITH PARCEL D.
  - 3.) PARCEL C REPRESENTS A PROPOSED PARCEL TO BE RETAINED BY PO FAMILY LIMITED.
  - 4.) PARCELS A & D REPRESENT EXISTING PARCELS.

DATE: 2/13/2001  
 SCALE: 1" = 120'  
 DRAWN BY: DLD  
 CHECKED: EDR

JOB No. S01-043  
 SHEET 1 OF 1  
 LEE DRESSER, L.S.  
 N.Y.S. LICENSE No. 050096  
*Lee Dresser*  
 SIGNATURE  
 LICENSED LAND SURVEYOR



**Warning**  
 ALTERATIONS TO THIS MAP NOT CONFORMING TO SECTION 7209, SUBDIVISION 2, NEW YORK STATE EDUCATION LAW, ARE PROHIBITED BY LAW. ALL CERTIFICATIONS HEREON ARE VALID FOR THIS MAP AND COPIES THEREOF ONLY IF SAID MAP OR COPIES BEAR THE IMPRESSION SEAL OF THE LICENSED LAND SURVEYOR WHOSE SIGNATURE APPEARS HEREON.

DATE	REVISION	BY

**SURVEY MAP**  
 SHOWING LANDS OF  
 PO LIMITED PARTNERSHIP AND YOUNG, ET. AL.  
 NO. 2665 - NO. 2677 NORTH TRIPHAMMER ROAD  
 TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK

**T. G. MILLER P.C.**  
 ENGINEERS AND SURVEYORS  
 203 NORTH AURORA STREET  
 P.O. BOX 777  
 ITHACA, NEW YORK 14851



**Charles Malcomb**  
Partner  
Direct Dial: 716.848.1261  
[cmalcomb@hodgsonruss.com](mailto:cmalcomb@hodgsonruss.com)

**Alicia Stoklosa**  
Associate  
Direct Dial: 585.613.3943  
[astoklosa@hodgsonruss.com](mailto:astoklosa@hodgsonruss.com)

April 9, 2024

Town of Lansing Zoning Board of Appeals  
Lansing Town Hall  
PO Box 186  
29 Auburn Road  
Lansing, New York 14882

To: Members of the Zoning Board of Appeals

Re: Proposed Solar Energy Facilities on North Triphammer Road

Our firm represents NY Lansing I, LLC and NY Lansing II, LLC, affiliates of Delaware River Solar (“Applicant”), in connection with its efforts to develop one five (5) megawatt and one three (3) megawatt alternating current (“MWac”) solar energy facilities (“Project”) located on two neighboring parcels of land on North Triphammer Road, tax map numbers 44.-1-1.2 and 44.-1-3.3 (“Property”), in the Town of Lansing, New York (“Town”). The Property is located in the Town’s R-2 Moderate Density (“R-2”) Zoning District.

This letter is in support of the Applicant’s use variance application (“Application”). The Application is being submitted to the Town of Lansing Zoning Board of Appeals (“ZBA”) to allow the Project on the Property<sup>1</sup>. Because solar energy facilities are public utilities for zoning and land use purposes, the Application is reviewed pursuant to the use variance standard applicable to public utilities, rather than the use variance test under N.Y. Town Law § 267-b(2).

**I. The Application is reviewed pursuant to the variance standard applicable to public utilities.**

The Court of Appeals in *Consolidated Edison Co. of New York, Inc. v. Hoffman*, 43 N.Y.2d 598 (1978) (“*Hoffman*”) held that public utilities are subject to an alternative standard when seeking a use variance. The *Hoffman* case involved the proposed addition of a 565-foot wet cooling tower at the Indian Point nuclear plant operated by Consolidated Edison (“Con Ed”) to mitigate the negative environmental impacts on the Hudson River from its prior cooling system.

<sup>1</sup> Section 270, Attachment 1, Schedule 1: Schedule of Land Uses or Activities, of the Town of Lansing Town Code (“Town Code”) indicates that Solar Energy Facilities, as that term is defined in the Town Code, are permitted only in the Town’s Industrial/Research (“IR”) zoning district.



After Con Ed’s building permit application was denied on the grounds that the tower exceeded the 40-foot building height limit in the zoning district and would result in prohibited uses, Con Ed sought a variance from the Village of Buchanan Zoning Board of Appeals (“Buchanan ZBA”). The Buchanan ZBA denied the application, finding that Con Ed had not shown any practical difficulties requiring the variance, had not demonstrated it was the minimal variance necessary, and failed to adequately consider alternatives.

Once this denial was challenged and made its way to the Court of Appeals, the Court determined that although the traditional approach is to require an applicant for a variance to demonstrate an unnecessary hardship,<sup>2</sup> such showing is “not appropriate where a public utility such as Con Edison seeks a variance, since the land may be usable for a purpose consistent with the zoning law, the uniqueness may be the result merely of the peculiar needs of the utility, and some impact on the neighborhood is likely.” *Hoffman*, 43 N.Y.2d at 607. Instead, utilities can demonstrate entitlement to a variance by showing that the proposed “modification is a public necessity ... required to render safe and adequate service[.]” *Id.* at 610 (internal citations omitted). And, “where the intrusion or burden on the community is minimal” the Court determined that the requisite showing “should be correspondingly reduced.” *Id.*

Since the *Hoffman* case, application of the alternative standard for public utility uses in the context of local land use approvals has been expanded given the more inclusive definition of a public utility developed by the Court of Appeals in *Cellular Tel. Co. v. Rosenberg*, 82 N.Y.2d 364 (1993) (“*Rosenberg*”). There, the Court defined “public utility” as

“‘a private business, often a monopoly, which provides services so essential to the public interest as to enjoy certain privileges such as eminent domain and be subject to such governmental regulation as fixing of rates, and standards of service.’ Characteristics of the public utility include (1) the essential nature of the services offered which must be taken into account when regulations seek to limit expansion of facilities which provide the services, (2) ‘operat[ion] under a franchise, subject to some measure of public regulation,’ and (3) logistic problems, such as the fact that ‘[t]he product of the utility must be piped, wired, or otherwise served to each user \* \* \*[,] the supply must be maintained at a constant level to meet minute-by-minute need[, and] [t]he user has no alternative source [and] the supplier commonly has no alternative means of delivery.’”

*Rosenberg*, 82 N.Y.2d 371 (internal citations omitted).

This much broader definition has resulted in application of the variance standard articulated in *Hoffman* to siting facilities, rather than just modifications or expansions to existing facilities, and to less “traditional” public utilities such as cellular telephone companies and

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<sup>2</sup> This requires the applicant to demonstrate that the property cannot yield a reasonable return if used for a permitted use, that the circumstances causing the hardship are unique to the subject property, and that the proposed use will not alter the essential character of the neighborhood. *Hoffman*, 43 N.Y.2d at 607.

renewable energy projects. *See Rosenberg*, 82 N.Y.2d 372 (The *Hoffman* case “applies to entirely new siting of facilities, as well as the modification of existing facilities.”). Based on the reasoning in this line of cases, New York courts have annulled variance denials for renewable energy projects based on Town Law § 267-b, and remanded such applications to local ZBA’s for review under the public utility variance standard. *See Delaware River Solar, LLC, et al. v. Town of Aurora Zoning Bd. of Appeals*, Index No. 808123/2022 (Sup. Ct. Erie Cty. Nov. 7, 2022); *see also Cipriani Energy Grp. Corp. v. Zoning Bd. of Appeals of the Town of Minetto, New York et al.*, EFC-2022-0043 (Sup. Ct. Oswego Cty. Apr. 12, 2022) (“[*Rosenberg*] directly applies to this situation and compels the determination as a matter of law that Cipriani [a solar developer] is a public utility.”); *Freepoint Solar LLC and FPS Potic Solar LLC v. Town of Athens Zoning Bd. of Appeals*, EF2021-795 (Sup. Ct. Greene Cty. Aug. 18, 2022) (vacated local ZBA’s denial of a use variance under Town Law § 267-b for failing to apply the use variance test under *Hoffman*). Zoning Boards of Appeal have also applied the public utility variance standard to variance applications submitted for solar energy facilities as a matter of course. *See Town of Binghamton Zoning Bd. of Appeals Decision*, dated June 14, 2022 (applying the public utility variance standard to a community solar developer and granting a use variance); *see Town of Oswego Zoning Bd. of Appeals Resolution*, dated Jan. 19, 2023 (“the Applicant ... further addressed the applicable use variance criteria the Courts of this State have applied to renewable energy projects ... declaring such projects to be public utilities and thus reviewable under the less-restrictive *Hoffman* standard of review, which was recently applied by the New York State Supreme Court in a legal proceeding involving the neighboring Town of Minetto ... the Project is a public utility and thus is afforded the standard of review for a [] variance articulated in *Hoffman*[] ... By its very nature, clean energy is a public necessity as proclaimed by the State of New York in its Clean Energy Standard and further codified in the Climate Leadership and Community Protection Act[.]”). These decisions are attached hereto as **Exhibit A**.

As in the above cases, this Project meets each one of the *Rosenberg* factors. Firstly, the Project will be owned by NY Lansing I, LLC and NY Lansing II, LLC, affiliates of Delaware River Solar—a private solar energy company that operates to provide clean, renewable electricity to the grid for consumers. Further, it cannot be argued that electricity is not essential to our everyday life. As former U.S. Secretary of Energy Hazel O’Leary said, “[e]lectricity is just another commodity in the same way that oxygen is just another gas.”<sup>3</sup> Second, the Project will be subject to “regulation and supervision” by the Public Service Commission (“PSC”) because it will generate electricity. *See W. Beekmantown Neighborhood Ass’n, Inc. v. Zoning Bd. of Appeals of Town of Beekmantown*, 53 A.D.3d 954, 956 (3d Dep’t 2008) (citing N.Y. PUB. SERV. LAW §§ 2(2–b), (12), (23); § 5(1)(b); § 66–c). The Project will be an integral part of the electricity generation and transmission system, generating clean, renewable energy and distributing it to consumers through the electric grid—a utility in its own right, subject to significant public regulation. And even though the more modern utility model has decoupled generation and transmission, companies that generate electricity for sale to consumers through the State’s transmission system are still treated as public utilities. Specifically, as a community solar development, installation and operation of the Project will be subject to the provisions of the PSC’s “New York State

<sup>3</sup> Quoted in Ralph Cavanagh, “Restructuring for Sustainability: Toward New Electric Service Industries,” *Electricity Journal* (July 1996): 71.



Standardized Interconnection Requirements and Application Process for New Distributed Generators and Energy Storage Systems 5MW or Less Connected in Parallel with Utility Distribution Systems.” See N.Y. PUB. SERV. COMM’N, Case 15-E-0082, *Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions For Implementing a Community Net Metering Program*.

Lastly, the product—electricity—can only be distributed by way of the electric grid. There is no other feasible method for an electricity generator to deliver electricity to consumers. Both the generator and the consumer are beholden to the transmission system to send and receive electricity service, and because of the ever-present demand for power, adequate supply must be maintained at all times. Further, there are significant logistical constraints in siting solar projects. Most properties in a municipality are not economically feasible for solar development. The size and layout of the parcel have to be at such a scale to accommodate the project, which often cannot be reduced to fit a smaller property given that solar projects are only economically feasible at a certain size. The property must also be located near existing utility infrastructure—namely, transmission lines and a substation—in order to interconnect the project to the utility grid. Without these crucial pieces, a solar project simply could not go forward. There is also the question of topography of the site and solar access. Installation of solar panels is significantly more expensive on certain challenging terrain (*e.g.*, excessive wetlands and steep slopes). And access to sunlight at the site as it exists, without having to modify it at exponential cost, is similarly crucial. Lastly, community solar sites are often leased, making it challenging to find a willing property owner.

Here, the Property was carefully selected to meet the needs of a community solar project. The Applicant began its search for an adequate project site by evaluating the capacity of the New York State Electric and Gas (“NYSEG”) Substation network. Once it was confirmed that this system had excess capacity, the Applicant began looking for available parcels. The Applicant initially identified more than two dozen parcels located in the IR zoning district (where Solar Energy Facilities are permitted with special conditions), which were then further analyzed to determine if they met certain criteria tied to lot size, slopes, and the presence of wetlands, waterbodies, and extensive tree coverage. The Applicant was forced to eliminate half of the identified parcels as these landowners were not interested in leasing or selling their land for the Project. The Applicant and its consultants then reviewed the remaining potential parcels for topography, slope, and elevation data; the New York State Department of Environmental Conservation (“NYSDEC”) and the U.S. Fish & Wildlife Service National Wetlands Inventory (“NWI”) data to identify any mapped wetlands onsite; applied local zoning requirements to the identified parcels to determine useable acreage; evaluated expected substation and feeder capacity; and assessed any substation upgrades that would be required by the Project. The remainder of the potential parcels were eliminated because they are either too far (several miles) from the applicable NYSEG substation, they do not have topography suited for the Project, or the available developable area is too small to accommodate the Project. In addition, several of the potential parcels have extensive wetland areas or house current gravel mining operations, which would not afford sufficient developable area on each parcel for the Project. This extensive analysis identified the Property as the only ideal candidate for the Project. The Applicant then entered into a lease agreement with the landowners for part of the Property to develop a community solar facility. The Applicant and the landowner consider the Project to be the best and highest use for their land,

allowing for renewable energy benefits, tax payments to the Town, and an income stream for the Property owners for generations to come. Additional information regarding the parcels that the Applicant explored for the Project in the IR zoning district is attached hereto as **Exhibit B**.

The roughly 66-acre Property is comprised of relatively flat land, which provides sufficient area to build and maintain a Solar Energy Facility without needing to heavily modify the site. This avoids any additional financial burden that would otherwise be passed on to energy consumers, or which would simply prohibit development of the Project. The Property is also near the point of interconnection (“POI”) (*i.e.*, where the Project physically connects to the NYSEG transmission system)—a necessary piece of the puzzle where the Applicant connects the Project to the grid in order to transmit the power to consumers. This proximity to the POI allows the Applicant to interconnect to the grid directly from the Property, without intruding on any neighboring properties. And, NYSEG has verified that both the feeder and substation have enough available capacity to accommodate a project of this size at a reasonable cost. Finding suitable land with available interconnection capacity is often the most challenging aspect of siting solar energy systems, since capacity is scarce and the costs to interconnect a solar project can be prohibitive. In this case, these criteria were met.

This unique combination of site characteristics provides an opportunity to build an economically feasible Solar Energy Facility on a relatively small project site. The eastern and southern property lines border largely vacant, undeveloped land. The northern and western property lines border minimal residential development and will be buffered by to be installed vegetative screening. Lastly, the Project will not negatively impact any agricultural soils onsite, which will instead be seeded with a pollinator mix and be allowed to lie fallow for the life of the Project. As such, the Property is well-suited for a solar project of this scale.

**a. The Project meets the public utility standard.**

The Project is a public utility use, and a request for a use variance for the Project is reviewed under the variance standard articulated in *Hoffman*.<sup>4</sup> This only requires a showing that the Project is a public necessity, needed to provide safe and adequate service. As stated above, electricity generation is undeniably a necessity. There is a public necessity for the Project, which will provide extensive public benefits: (a) the development of the Project will generate local, county, and school tax revenue while not increasing demand on Town infrastructure; (b) energy generated from the Project will be distributed to the utilities’ electrical grid and will directly benefit utility customers (residential and/or small businesses) enrolled in the “community solar program”

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<sup>4</sup> Courts that have considered the question have determined that a renewable energy project is a public utility. See *W. Beekmantown Neighborhood Ass’n, Inc. v. Zoning Bd. of Appeals of Town of Beekmantown*, 53 A.D.3d 954, 956 (3d Dep’t 2008) (where the Third Department upheld the ZBA’s determination that wind turbines were a “public utility” under the zoning law); see also *Wind Power Ethics Group (WPEG) v. Zoning Bd. of Appeals of Town of Cape Vincent*, 60 A.D.3d 1282, 1283 (4th Dep’t 2009) (where the Fourth Department upheld the ZBA’s classification of a series of wind-powered generators as a utility within the meaning of the zoning law which defined a utility as “telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities.”).



via a discount; and (c) residential customers will have the option to source solar energy which they may not have the capital to generate on their own.

Moreover, the Project will assist the State to achieve its aggressive climate goals, which have not yet been achieved. The Climate Leadership and Community Protection Act (“CLCPA”) outlines interrelated climate mandates, including: “to reduce greenhouse gas emissions from all anthropogenic sources 100% over 1990 levels by the year 2050, with an incremental target of at least a 40% reduction in climate pollution by the year 2030.”<sup>5</sup> To date, the State has not met all mandates imposed by the CLCPA. The State still needs 20 GW of new renewable generation and transmission to meet the 2030 goals—meaning, the “State will have to increase the rate at which renewable electricity projects are permitted and approved for interconnection to the State electric grid as over the last 20 years the State has only added 12.9 gigawatts of projects of both renewable and fossil projects.”<sup>6</sup> This has created an additional public need for increased renewable energy generation siting throughout the State.

**b. The Project presents little to no burden on the community.**

Further, as noted in *Hoffman*, where there is little to no burden on the community, the requisite showing from the utility is correspondingly reduced. Here, the Project will not present any significant burden on the community, but will instead be a safe, quiet, clean generator of electricity. The Project is proposed to be sited in a mixed-use area of minimal residential and rural uses, surrounded largely by open, undeveloped land, as well as residential properties. The Project is proposed to be sited on parcels of land that back up to a large area of vacant, undeveloped land. There is a vegetative buffer between where the solar panels will be on the Project Site and the minimal residential properties to the north and southwest of the solar panel area, and the Project abides by all Town required setbacks. The Property is undeveloped, with no public water or sewer facilities—and no municipal water or sewer facilities will be required for the Project—making the Property more suitable for a community solar project than residential development. Once constructed, the Project will have negligible impacts to traffic in the area, as the Project will only be visited a few times per year for routine maintenance and inspections. The landowner prefers development of a temporary community solar farm over a permanent development on the land, but without the Project, much more intensive permanent land uses—like housing developments—are possible. Lastly, the Applicant submitted a Full Environmental Assessment Form (“FEAF”) Part I as part of its initial application, as required by the State Environmental Quality Review Act (“SEQRA”), which indicated that the Project will not result in stormwater impacts, will not significantly impact wetlands or waterbodies, will not create a new demand for water or energy or generate wastes, will not generate air emissions or noise once installed, will not result in any traffic impacts, and will not impact a designated significant natural community or critical environmental area. *See* FEAF Part I, dated April 5, 2024. Thus, the Applicant is seeking to convert unused land

<sup>5</sup> S.6599, Reg. Sess. (N.Y. 2019) (Relates to the New York state climate leadership and community protection act) at § 2(a).

<sup>6</sup> N.Y.S. COMPTROLLER, *Renewable Electricity in New York State, Review and Prospects* (Aug. 2023) at 5; *see also* NYISO, *Short-Term Assessment of Reliability: 2023 Quarter 2* (July 2023) at 29.

to an economically beneficial site with zero emissions, fumes, or odors, no traffic impacts, and little to no noise above background levels.

Moreover, the Project actually presents *net benefits* to the community. As noted above, because the Applicant is proposing a community solar project, residents and local businesses can use the electricity generated from the Project at a lower cost. They would receive electricity from the transmission utility (*i.e.*, NYSEG) in the same manner as they do now, but with a discount—and the added benefit of knowing it is being generated from a renewable source in their own neighborhood. Lastly, the installation, operation, and removal of the Project will impact the land and subsequent future uses to a lesser extent than would other current land use options. The solar posts are pile driven or screwed in place, creating minimal disturbance during installation. The racking system that holds the solar panels is elevated off the ground, leaving the area under and between the solar arrays as grassland or meadow ecosystems, planted with native grasses and pollinator species to benefit a host of wildlife. After construction, soils on site will not be disturbed, but will instead be left fallow to build organics and other important soil components overtime. Disturbance to the land that would need to be restored upon decommissioning is generally limited to removal of the panels along with their racking and posts, and any installed concrete pads for inverters or other similar equipment. The access road will be removed, unless the owner requests otherwise. And, pursuant to the terms of the lease, the landowner has the option to terminate the Project after its initial useful life. At such time, the Applicant (then the Project Operator) must decommission the Project, remove all components, and restore the land to a future use deemed acceptable by the landowner and Town. This decommissioning work will be ensured by a security instrument held by the Town, in an amount deemed acceptable to the Town.

## II. Conclusion

Given the facts presented above, the Applicant respectfully requests that the ZBA find the Project to be a public utility use and grant the requested use variance allowing the Project on the Property, as it meets the variance standard for public utilities under New York law.

We thank you for your consideration of this letter and request. If you have any questions or concerns, please do not hesitate to contact me at (585) 613-3943 or [astoklosa@hodgsonruss.com](mailto:astoklosa@hodgsonruss.com).

Very truly yours,



Alicia R. Stoklosa



AST  
Enclosure

cc: Kelly Geiger, Planning Clerk, Town of Lansing (*via email*)  
Mollie Messenger, Delaware River Solar (*via email*)

# Exhibit A



STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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DELAWARE RIVER SOLAR, LLC, NY AURORA I, LLC, NY  
AURORA II, LLC,

Petitioners,

For Judgment Pursuant to Article 78 of the CPLR and for a  
Declaratory Judgment Pursuant to CPLR 3001

Index No.: 808123/2022  
Hon. Craig. D. Hannah

-against-

TOWN OF AURORA ZONING BOARD OF APPEALS,

Respondent.

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**ORDER AND JUDGMENT**

**WHEREAS**, Petitioners DELAWARE RIVER SOLAR, LLC, NY AURORA I, LLC, NY AURORA II, LLC (together, "Petitioners"), commenced this combined Declaratory Judgment action and CPLR Article 78 proceeding by filing a Notice of Petition and Verified Petition, with exhibits, on July 18, 2022, seeking an order and judgment annulling the determination of the Town of Aurora Zoning Board of Appeals ("Respondent"), declaring Petitioners to be a public utility for purposes of reviewing their use variance application, ordering Respondent to issue the use variance for Petitioners' proposed project pursuant to the public utility use variance standard, and awarding Petitioners attorneys' fees under Section 107 of the Public Officers Law; and

**WHEREAS**, upon reading and considering (1) Petitioners' Notice of Petition, dated July 18, 2022 [Doc. 5]; (2) Petitioners' Verified Petition, with exhibits, dated July 18, 2022 [Docs. 1-5]; (3) Petitioners' Memorandum of Law in Support of the Verified Petition, dated

August 24, 2022 [Doc. 11]; (4) the Affirmation of Charles W. Malcomb, Esq. in Support of the Verified Petition, with exhibits, dated August 24, 2022 [Docs. 12,13]; and (5) the Affidavit of Peter Dolgos in Support of the Petition, dated August 24, 2022 [Doc. 14]; and

**WHEREAS**, upon reading and considering (6) The Certified Transcript of Proceedings dated September 2, 2022 [Doc. 15]; (7) Respondent's Verified Answer with Objections in Point of Law, dated September 28, 2022 [Doc. 16]; and (8) Respondent's Memorandum of Law in Support of the Answer with Objections in Points of Law of Town of Aurora Zoning Board of Appeals, dated September 28, 2022 [Doc. 17]; and

**WHEREAS**, upon reading and considering (9) Petitioners' Memorandum of Law in Reply, dated October 5, 2022 [Doc. 18]; and

**WHEREAS**, the Court hearing oral argument on October 12, 2022, and appearances having been made by Hodgson Russ LLP (Charles W. Malcomb, Esq. and Alicia R. Legland, Esq.) on behalf of Petitioners and Lippes Mathias LLP (Jennifer C. Persico, Esq.) on behalf of Respondent; and

**WHEREAS**, the Court having issued rulings on October 12, 2022 on the above and the transcript of said ruling is annexed hereto as **Exhibit A**, and

**NOW**, upon all of the pleadings, affidavits, papers, and proceedings had herein, and deliberation having been had thereon, it is hereby:

**ORDERED, ADJUDGED, AND DECREED** that Petitioners' Verified Petition filed on July 18, 2022 is hereby granted in part, and denied in part; and it is further



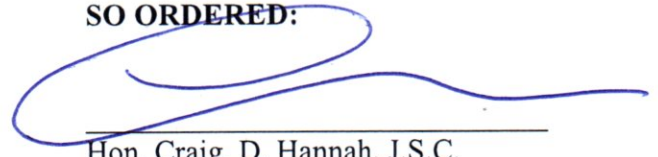
**ORDERED, ADJUDGED, AND DECREED** that the determination of the Town of Aurora Zoning Board of Appeals is hereby annulled; and it is further

**ORDERED, ADJUDGED, AND DECREED** that Petitioners' use variance application for the proposed solar energy facility is hereby remanded to Respondent for consideration pursuant to the public utility use variance standard as articulated in *Consolidated Edison v. Hoffman*, 43 N.Y.2d 598 (1978); and it is further

**ORDERED, ADJUDGED, AND DECREED** that Petitioners' request for attorneys' fees pursuant to Section 107 of the Public Officers Law is hereby denied.

**SO ORDERED:**

*Dated: November 7, 2022*



Hon. Craig. D. Hannah, J.S.C.

**GRANTED:**

**FILED: ERIE COUNTY CLERK 11/14/2022 12:07 PM**  
**FILED: ERIE COUNTY CLERK 10/21/2022 01:30 PM**

NYSCEF DOC. NO. 20

INDEX NO. 808123/2022  
INDEX NO. 808123/2022  
RECEIVED NYSCEF 11/14/2022  
RECEIVED NYSC Section 3, Item d.

# EXHIBIT A



1 STATE OF NEW YORK : SUPREME COURT  
2 COUNTY OF ERIE : PART 31

3 DELAWARE RIVER SOLAR, LLC,  
4 NY AURORA I, LLC,  
5 NY AURORA II, LLC,

6 Petitioners,

7 -vs- Index No. 808123/2022

8 TOWN OF AURORA ZONING BOARD OF APPEALS,

9 Respondent.

10 Buffalo City Court Building  
11 50 Delaware Avenue  
12 October 12, 2022

13 B e f o r e:

14 HONORABLE CRAIG D. HANNAH  
15 SUPREME COURT JUSTICE

16 A p p e a r a n c e s:

17 CHARLES W. MALCOMB, II, ESQ.,  
18 Appearing for the Petitioners via Teams

19 JENNIFER PERSICO, ESQ.,  
20 Appearing for the Respondent via Teams

21  
22  
23  
24  
25

1 THE COURT: Okay. Thank you both. I  
2 appreciate both of your arguments and I think you both  
3 made some very interesting and very concise points. I'm  
4 going to follow the ruling from Consolidated Edison  
5 versus Hoffman. I do agree with Miss Persico it is not  
6 our job to supplant the Zoning Board of Appeals. Our job  
7 is to make sure that the right standard was followed.  
8 So, I'm going to grant the Petitioners' application in  
9 part. I'm going to annul and set aside the initial  
10 ruling and send it back to the Town of Aurora to consider  
11 the public use standard variance. I'm not going to grant  
12 attorneys fees, so that part of the application will be  
13 denied. And that's the ruling of the Court. Could one  
14 of you prepare an order and circulate it and submit it to  
15 me.

16 MR. MALCOMB: I can take care of that, Your  
17 Honor. I'll submit a proposed order to respondent's  
18 counsel before I submit it to the Court.

19 THE COURT: My clerk would like for it to be  
20 exchanged and submitted to the Court within ten days.  
21 All right. Thank you both.

22 MS. PERSICO: Thank you.

23 MR. MALCOMB: Thank you, Your Honor.

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C E R T I F I C A T I O N

The above is certified to be a true and correct transcript of the testimony.

*Kim M. Haettich*  
KIM M. HAETTICH  
Official Court Reporter

**STATE OF NEW YORK  
SUPREME COURT : COUNTY OF OSWEGO**

**CIPRIANI ENERGY GROUP CORP.,**

**Petitioners**

**JUDGMENT**

**For Judgment Pursuant to Article 78 of the  
CPLR and for a Declaratory Judgment,  
Pursuant to the CPLR**

**Index No.: EFC-2022-0043**

**v.**

**ZONING BOARD OF APPEALS OF THE  
TOWN OF MINETTO, NEW YORK, ROB  
RAMSEY in his official capacity as Code  
Enforcement Officer of the Town of Minetto,  
New York and TOWN OF MINETTO,  
NEW YORK,**

**HON. GREGORY R. GILBERT JSC**

**Respondents.**

**Appearances:** Daniel A. Spitzer, Esq.  
Hodgson Russ LLP  
Attorneys for Petitioners  
140 Pearl Street, Ste. 100  
Buffalo, New York 14202-4040

Christopher J. Baiamonte, Esq.  
The Wladis Law Firm, PC  
Attorneys for Respondents  
PO Box 245  
Syracuse, New York 13214

**BACKGROUND**

This Article 78 Petition seeks to annul findings by the Town of Minetto Zoning Board of Appeals: directing the Town Code Enforcement Officer to stop requiring a use variance; and declaring that petitioner is a public utility. The issues pertain to plans by Cipriani Energy Group Corp. ("Cipriani") to build a solar energy project on lands to which it is holder of a purchase option agreement located in the Town. The Town Code Enforcement Officer ("CEO") determined that a variance was required and the application for the same was denied by the Town Zoning Board of Appeals ("ZBA"). Cipriani alleges that this contravenes the Town's Local Law No. 3 of 2020.

The land in question is zoned R-10 and R-20. As set forth by the petition, the project is for the construction and operation of a 4.5 megawatt solar energy facility classified as a large solar energy system under Section 107 of the Zoning Code. Cipriani submitted a site plan application on March 9, 2021 and a Unified Solar Permit on April 6, 2021. In response, the CEO determined that a use variance would be required. Cipriani filed an appeal to the ZBA under Zoning Code 302(1) requesting an interpretation in the matter on May 25, 2021. The matter was tabled for further review by the ZBA at a meeting on July 22, 2021 and eventually decided on December 14,



2021 with the ZBA making determination that Cipriani would be required to seek a variance for the project. The ZBA made no determination as to the status of Cipriani as a public utility.

The matter was argued before the Court via Microsoft Teams on March 17, 2022 with counsel as indicated above appearing for the parties.

### DISCUSSION

The question presented is whether the determination by the ZBA was made in violation of lawful procedure, affected by error of law, arbitrary or capricious or an abuse of discretion. Jackson v. New York State Urban Development Corp., 67 NY2d 400 (1986); Matter of May v. Town of Lafayette Zoning Board of Appeals, 43 AD3d 1427 (4<sup>th</sup> Dept 2007). The essence of the dispute is the finding that Section 606 of the Zoning Ordinance of the Town of Minetto (“Code”) applies to the exclusion of Article 4 of the Code to prohibit the special permit sought by Cipriani. The petition claims that the Code does not state such an exclusion and that the ZBA failed to distinguish the use sought by Cipriani as a public utility or to even determine if Cipriani was a public utility.

The Court starts with the claim that Cipriani is a public utility. The case, Cellular Telephone Company v. Rosenberg, 82 NY2d 364 (1993), directly applies to this situation and compels the determination as a matter of law that Cipriani is a public utility. Matter of W. Beekmantown Neighborhood Association, Inc. v. Zoning Board of Appeals of the Town of Beekmantown, 53 AD3d 954 (3<sup>rd</sup> Dept 2008); Matter of Wind Power Ethics Group (WPRG) v. Zoning Board of Appeals of the Town of Cape Vincent, 60 AD3d 1282 (4<sup>th</sup> Dept 2009). As in Beekmantown and WPRG, public utility is not specifically defined by the Code.

Generally, the decision by the ZBA is regarded as presumptively correct absent illegality, a finding that it is arbitrary and capricious or erroneous as a matter of law or that it is unsupported by substantial evidence. Corter v. Zoning Board of Appeals for the Village of Fredonia, 46 AD2d 184 (4<sup>th</sup> Dept 1974); Matter of Carnelian Farms, LLC v. Leventhal, 151 AD3d 844 (2<sup>nd</sup> Dept 2017). In this matter what is presented is the interpretation of the Code and specifically that interpretation given to Section 606 by the ZBA. While the ZBA interpretation of the Code is entitled to deference, the Court bears the ultimate responsibility for interpreting the law. Matter of Devogelaere v. Webster Zoning Board of Appeals, 87 AD3d 1407 (4<sup>th</sup> Dept 2011) motion for leave to appeal denied 18 NY3d 808; Matter of Ogden Land Development, LLC v. Zoning Board of Appeals of the Village of Scarsdale, 121 AD3d 695 (2<sup>nd</sup> Dept 2014).

The Code must be construed according to the words used being given their ordinary meaning. Baker v. Town of Islip Zoning Board of Appeals, 20 AD3d 522 (2<sup>nd</sup> Dept 2005) motion for leave to appeal denied 6 NY3d 701; Matter of Falco realty, Inc. v. Town of Poughkeepsie Zoning Board of Appeals, 40 AD3d 635 (2<sup>nd</sup> Dept 2007) motion for leave to appeal denied 9 NY3d 807. It is well settled that a zoning code must be strictly construed against the municipality and in favor the property owner. Matter of Mamaroneck Beach & Yacht Club, Inc. v. Zoning Board of Appeals of the Village of Mamaroneck, 53 AD3d 494 (2<sup>nd</sup> Dept 2008); Matter of Falco realty, Inc. v. Town of Poughkeepsie Zoning Board of Appeals, 40 AD3d 635 (2<sup>nd</sup> Dept 2007) motion for leave to appeal denied 9 NY3d 807.

As a public utility, Cipriani is entitled to the application of Article 4 of the Code. The finding by the ZBA directly contravenes the express provisions of Article 4 of the Code that allow for the use sought by Cipriani and renders Article 4 of the Code meaningless for the public utility use. The use is authorized under the Code for a public utility in either the R-10 or R-20 districts pursuant to Code Sections 431 and 441 after issuance of a special permit. If it were the case that Section 606 was intended to modify either Section 431 or 441 specifically as to solar public utility energy projects, then it should have specified that to be the case. Instead, Section 606 is silent as to solar energy projects as a public utility. It was error to read such a restriction into Section 606.

Further, Section 606 as interpreted by the ZBA would nullify other provisions of Article 6 as follows:

Section 601 Purpose

The purpose of this section is to facilitate the development and operation of renewable energy systems based on sunlight. Solar energy systems are appropriate in all zoning districts when measures are taken, as provided in this section, to minimize adverse impacts on neighboring properties and protect the public health, safety and welfare.

Section 602 Applicability

2. Solar energy systems are permitted in all zones in the Town, subject to the requirements described below.

Section 605 Large Scale Solar Energy Systems

1. A Large Solar energy System is defined as a solar photovoltaic system with a rated capacity larger than 200kW, the principal purpose of which is to provide electrical power for sale to the general power grid or to be sold to other power customers, or to be consumed on site.
2. Pursuant to the Site Plan Review process, the project proponent shall provide the following documents to the Planning Board and/or Zoning Board:
  - a. Survey map done by a licensed surveyor;
  - b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
  - c. Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
  - d. Documentation of the major system components to be used, including the panels, mounting system, and inverter;
  - e. Name, address and contact information for system installer;



- f. Name, address and phone number of the project proponent, as well as all other property owners, if any;
  - g. Zoning district designation for the parcel of land comprising the project site;
  - h. Proof the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer owned generator. Off grid systems are exempt from this requirement.
3. Large scale principal use energy systems are subject to setback requirements of the particular zoning district in which they are located.

Section 609 Non-Conformance

- 2. Ground mounted systems
  - b. If a ground mounted system is to be installed on a property that is non-conforming because it violates zoning district requirements other than setbacks, then a special use permit must be obtained for the proposed installation.

While Section 601 states the purpose of Article 6 is to facilitate solar energy systems in all zoning districts. Section 606 permits the use in all zoning districts except residential districts. The conflict is again apparent with Section 602 allowing solar energy systems in all zones in the Town. Section 605 applies to large scale solar energy systems but makes no limitation to the public utility use allowed for both R-20 and R-10 residential zones. Section 609(2)(b) allows for a special use permit when there is a violation of zoning district requirements whereas here the ZBA determined that a special use permit could not be allowed based on Section 606.

The ZBA determination based on Section 606 is also internally inconsistent stating:

- 1. The zoning law of the Town of Minetto must be read and interpreted in its entirety. Section 431 allows certain uses with a special permit in an R-20 zone. Section 609 also refers to the use of special permits in certain cases. However, Section 606 specifically excludes the inclusion of ground mounted solar systems in R-20 zones.

Section 606 states as follows:

Section 606 Permitted Zoning Districts

- 1. All building mounted and ground mounted systems are permitted in all zoning districts, except residential zones, as a primary use or accessory use to any lawfully permitted principal use on the same property upon issuance of the proper permits herein and upon compliance with all requirements of this zoning ordinance.

Section 606 makes no specific reference to R-20 zones just as it makes no reference to the public utility use. Reference to the R-10 zone also does not appear in Section 606 and was not addressed

by the ZBA while it was part of the application. [DKT# 1 par. 14]. The ZBA interpretation of Section 606 is unreasonable and irrational. The failure of the ZBA to address the issue of public utility or the R-10 use as requested also affects the ZBA determination with a failure of substantial evidence to support the denial. Van Wormer v. Planning Board, 158 AD2d 995 (4<sup>th</sup> Dept 1990).

In short, the public utility use proposed by Cipriani for a large solar energy system is specifically allowed by Sections 431 and 441 of the Code and is subject to the requirements of Article 6 of the Code including but not limited to Section 603(1); 605 and 607(5). Cipriani is required to apply for a special use permit. The Town does not have the right under the Code to issue a blanket denial of a special use permit based on Section 606.

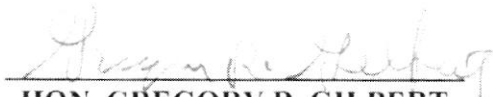
Accordingly, it is

**ORDERED, ADJUDGED AND DECREED** that the petition of **CIPRIANI ENERGY GROUP CORP.** is hereby **GRANTED** to the extent indicated herein; and it is

**ORDERED, ADJUDGED AND DECREED** that the determination of the Zoning Board of Appeals is **RESCINDED**, and the Respondents are hereby directed to proceed with a review of such building permit and special use permit requirements as have been and may be submitted by **CIPRIANI ENERGY GROUP CORP.** in accordance herewith.

**ENTER**

**Dated: April 12, 2022**  
**Oswego, New York**

  
**HON. GREGORY R. GILBERT**  
**SUPREME COURT JUSTICE**



At an IAS Term of the Greene County Supreme Court, held in and for the County of Greene, in the Village of Catskill, New York, on the 18th day of August, 2022.

PRESENT: HON. ADAM W. SILVERMAN,  
Acting Justice of the Supreme Court

STATE OF NEW YORK  
SUPREME COURT COUNTY OF GREENE

In the Matter of the Application of

FREEPOINT SOLAR LLC, and FPS POTIC  
SOLAR LLC,

Petitioners,

*For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules*

DECISION AND ORDER  
INDEX NO. EF2021-795

-against-

TOWN OF ATHENS ZONING BOARD OF  
APPEALS,

Respondent.

APPEARANCES:

THE MURRAY LAW FIRM PLLC  
Jacqueline Phillips Murray, Esq.  
10 Maxwell Dr Ste 100,  
Clifton Park, NY 12065  
**Attorney for Petitioners**

DREYER BOYAJIAN, LLP  
John Dowd, Esq.  
75 Columbia St.  
Albany, NY 12210  
**Attorney for the Respondent**

The following e-filed documents, listed by NYSCEF document number 1, 2, 15-35, 39-43, 46-53, 55, 56, 57 were read on the Petition and Answer.

ADAM W. SILVERMAN, A.J.S.C.

This special proceeding pursuant to CPLR article 78 was commenced on October 6, 2021, when Petitioners filed the Petition challenging Respondent's denial of a use variance. Petitioners, Freepoint Solar LLC, a nationwide developer of renewable energy infrastructure, and FPS Potic Solar LLC, a subsidiary of Freepoint Solar LLC, secured options to purchase two parcels of real property located at Potic Mountain Road in the Town of Athens, Greene County, intending to locate a solar energy facility on a portion thereof. Petitioners faced repeated delays from the Town government as they sought a building permit or standing to apply for a use variance. When their application to Respondent was finally heard, Respondent determined not to apply the public utility variance standard ("public necessity" test) to the application, but rather the general standard set under Town Law § 267-b (2) (b) (*see generally Matter of Otto v Steinhilber*, 282 NY 71 [1939]). Because Respondent erred by applying the wrong standard to the application, the determination is hereby vacated, and the matter remanded to Respondent for a new determination based upon application of the correct standard.

## I. BACKGROUND

On July 18, 2018, Petitioners contacted the Town regarding the building permit application and to request a pre-application meeting with Respondent [NYSCEF Doc No 1 ¶ 19]. Although an application with details of the Project had yet to be filed, the Town Attorney advised, by e-mail dated July 25, 2018, Petitioners' project "would not seem to fit the circumstances of wanting a large scale development in an RU zone" [NYSCEF Doc No 1 ¶ 20]. Petitioners thereafter attended the Town Board's September 17, 2018 meeting to informally present on the project and, based upon feedback from that meeting, Petitioners met with adjoining landowners regarding the



proposal leading to letters of support from nine of fourteen adjoining landowners and two additional adjoining landowners also offering their adjacent properties to be used for the project. [NYSCEF Doc No 1 ¶ 21-24].

On December 6, 2019, Petitioners contacted the Town Attorney to confirm the Town's application procedures and were informed they must file an application for a building permit from the Town Code Enforcement Officer ("CEO") and be denied before they would have standing to appeal the denial and could file a Use Variance Application with Respondent [NYSCEF Doc No 1 ¶ 25-27]. On January 7, 2020, Petitioners sent their Building Permit Application, together with two copies of the preliminary site plan [NYSCEF Doc No 1 ¶ 28].

The CEO requested the "cost of construction" to calculate the fee, and, on January 10, 2020, the Town Attorney replied that Petitioners would "need to use a proposed value for the Project" so that the building permit fee could be calculated [NYSCEF Doc No 1 ¶ 29-30]. On January 15, 2020, Petitioners sought clarification regarding the need for cost of construction as the Town's fee schedule did not set forth a building permit application fee based on the "costs of construction" or the "value for the Project," but was rather, based on a "per square foot" calculation [NYSCEF Doc No 1 ¶ 31]. On January 16, 2020, the Town Attorney directed Petitioners to contact the CEO directly, however the CEO failed to respond until February 7, 2020, when he advised that the building permit application was "incomplete without an estimate of the cost of construction so we can calculate the permit fee," and requested copies of Petitioners' option agreements [NYSCEF Doc No 1 ¶ 31-33]. On February 12, 2020, the CEO advised Petitioners that the denial would be issued upon receipt of the option agreements [NYSCEF Doc No 1 ¶ 34]. On February 26, 2020,

Petitioners provided the “cost of construction” and option agreements while offering to pay the fee once it was calculated by the CEO [NYSCEF Doc No 1 ¶ 35].

Expecting the denial to be forthcoming, on February 28, 2020, Petitioners’ expressed their intention to attend Respondent’s March 11, 2020 meeting, however the Town Attorney stated a denial would not be provided until the application was “completed and the building permit fee is paid,” despite the Town having not provided a fee amount or noted any additional alleged omissions and advised that Petitioners would not be afforded an opportunity to be heard at the meeting [NYSCEF Doc No 1 ¶ 35-38]

On March 2, 2020, the CEO discussed Petitioners’ application with the Town Board, and on March 3, 2020, the Town Attorney advised Petitioners that the application would not be decided until the fee was paid, despite no fee amount being set, and that the Town Board directed the Town Attorney to have no further discussions or correspondence with Petitioners regarding the matter [NYSCEF Doc No 1 ¶ 39]. Thereafter, on March 6, 2022, since no calculation was provided, Petitioners did their own calculation and submitted it with a check to the Town [NYSCEF Doc No 1 ¶ 40-42]. In response, on March 19, 2020, the CEO requested data related to the project’s lot coverage and connection to the power grid despite Petitioners having already provided lot coverage information with its application [NYSCEF Doc No 1 ¶ 43-45].

On April 15, 2020, the CEO requested, despite none of these items being on the building permit application, the quantity and square feet of the proposed solar panels, the total square feet of land for the project, and whether a Stormwater Pollution Prevention Plan (“SWPPP”) and State Pollutant Discharge Elimination System (“SPDES”) General Permit would be filed with the New York State Department of Environmental Conservation (“NYSDEC”) and any other



environmental requirements [NYSCEF Doc No 1 ¶ 46-49]. On April 16, 2020, Petitioners replied that the solar panel square footage was already provided to the CEO on March 13 and 19, 2020, and added the solar panel quantity and dimensions, and confirmed that a SWPPP, SPDES General Permit and a Full Environmental Assessment Form would be required for the project and would be submitted with Petitioners' applications upon the CEO denying the building permit application [NYSCEF Doc No 1 ¶ 49]. On April 17, 2020, the CEO requested the NYSDEC SWPPP and SPDES General Permit [NYSCEF Doc No 1 ¶ 50]. On May 8, 2020 the CEO requested Petitioners secure all New York State approvals for the project [NYSCEF Doc No 1 ¶ 54].

On May 4, 2020, Petitioners attempted to speak at the Town Board meeting but were muted and told they must request to be on the agenda through the Town Clerk [NYSCEF Doc No 1 ¶ 52]. On May 12, 2020, after rejecting Petitioners' request to be added to the agenda, the Town Supervisor stated that there was "no reason to schedule a meeting with the Town Board/Town Attorney/Planning or Zoning Boards" because Petitioners' application remained "incomplete" until the Town received: (1) "full set of engineered plans"; (2) "estimated project cost"; and (3) "correct application fee" [NYSCEF Doc No 1 ¶ 52-58].

On May 15, 2020, the CEO made an additional request for Workers' Compensation and liability insurance certificates [NYSCEF Doc No 1 ¶ 60].

On June 15 and July 1, 2020, Petitioners provided the Town with a full set of plans, all New York State approvals for the project, and Workers' Compensation and liability insurance certificates, however, despite outreach by Petitioners over the next two months, the CEO failed to provide a fee amount [NYSCEF Doc No 1 ¶ 61-62].

On September 9, 2020, the Town Attorney requested that Petitioners re-submit all previously provided information and Petitioners did so the same day [NYSCEF Doc No 1 ¶ 63]. On October 20, 2020, the Town Board adopted a fee of \$1,000 per megawatt and on December 11, 2020, Petitioners delivered the fee [NYSCEF Doc No 1 ¶ 64-65]. On January 20, 2021, over a year after the initial application, the CEO finally denied the application because the project was in a zoning district not permitted by Town's Solar Law, as was evident since the time the application was submitted [NYSCEF Doc No 1 ¶ 66-67]

On February 9, 2021, Petitioners filed their Use Variance Application with Respondent [NYSCEF Doc No 1 ¶ 68-70]. Petitioners then attended Respondent's March 17, 2021 meeting, observing their applications unopened, and were informed by Respondent's Chairman that "there was nothing he could do" because the project was in a zoning district where it was not a permitted use [NYSCEF Doc No 1 ¶ 71-78]. Petitioners next presented at Respondents' May 12, 2021 meeting, urging consideration of the Use Variance under the public utility standard [NYSCEF Doc No 1 ¶ 80-89]. After Respondent requested the option agreements, despite their previous submittal, and failed to attend a joint visual field study at the site organized by Petitioners with the Planning Board and Respondent, Petitioners next presented the Project at the ZBA's August 11, 2021 meeting [NYSCEF Doc No 1 ¶ 96, 106, 108, 111-119]. On September 8, 2021, Respondent issued a written decision unanimously denying Petitioners' Use Variance Application [NYSCEF Doc No 1 ¶ 124-129]. Significantly, the determination was based upon the standard set forth in Town Law § 267-b (2) (b) and provided no consideration under the public utility test set forth in *Matter of Consolidated Edison Co. v Hoffman* [NYSCEF Doc No 29].



## II. Standard Applicable to a Public Utility Use Variance Application

Generally, an applicant for a use variance must show that the zoning regulations and restrictions have caused “unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created” (Town Law § 267-b [2] [b]; *see generally Matter of Otto v Steinhilber*, 282 NY 71 [1939]).

“It has been observed . . . that [the unnecessary hardship] requirements are not appropriate where a public utility . . . seeks a variance, since the land may be usable for a purpose consistent with the zoning law, the uniqueness may be the result merely of the peculiar needs of the utility, and some impact on the neighborhood is likely” (*Matter of Consolidated Edison Co. of N.Y. v Hoffman*, 43 NY2d 598, 607 [1978]; *see* 2 Salkin, *New York Zoning Law and Practice* § 11:22 [4th ed. 2011]). “It has long been held that a zoning board may not exclude a utility from a community where the utility has shown a need for its facilities” (*Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d 364, 372 [1993] [internal quotation marks, brackets, and citations omitted]; *see* 12 NY Jur 2d, *Buildings, Zoning, and Land Controls* § 290; 2 Salkin, *New York Zoning Law and Practice* § 11:19 [4th ed. 2011]). Likewise, local boards may not deny an application based “solely on community objection” (*Matter of Biggs v Eden Renewables LLC*, 188 AD3d 1544, 1548

[3d Dept 2020] [Generalized community objections to the large scale solar project “due to potential concerns of negative visual impact and negative impact upon adjoining property values” held insufficient to overcome evidence in the record justifying granting of application]; *see also Cellular Tel. Co. v Village of Tarrytown*, 209 AD2d 57, 66 [2d Dept 1995] [In considering a public utility’s application for a variance, “a municipality may not invoke its police powers solely as a pretext to assuage strident community opposition”], *lv denied* 86 NY2d 701 [1995]). “In short, due to the essential nature of the service and the limited flexibility there is as to where the facility can be located in order to generate or provide the service, the facility must be, and is, entitled to a relaxed zoning standard” (Patricia E. Salkin and Robert Burgdorf, *Siting Wind Farms in New York: Applicability of the Relaxed Public Utility Standard*, New York Zoning Law and Practice Report vol. 7, No. 1.; *see* 3 Rathkopf’s *The Law of Zoning and Planning* § 48:6; 78:2 [4th ed.]).

“Although a municipality is not free to prevent a utility from providing necessary services by application of its zoning powers, neither may a utility simply disregard the local ordinances. Rather, a balance must be maintained between those interests of the locality which can be expressed by zoning ordinances and the needs of the community which must be served by the utility” (*Matter of Zagoreos v Conklin*, 109 AD2d 281, 289 [2d Dept 1985]; *see Matter of United States Transmission Sys. v Schoepflin*, 63 AD2d 970, 971 [2d Dept 1978]; *see also* 2 Salkin, *New York Zoning Law and Practice* § 11:27 [4th ed. 2011] [Expanding upon efforts to regulate solar energy facility siting to balance the need for energy with the potential negative externality such as loss of habit and open space]; *see generally* Sarah Pizzo, Note, *When Saving the Environment Hurts the Environment: Balancing Solar Energy Development with Land and Wildlife Conservation in A Warming Climate*, 22 *Colo J Intl Envntl L & Poly* 123 [2011]). “Instead [of the



unnecessary hardship test], the utility must show that modification is a public necessity in that it is required to render safe and adequate service, and that there are compelling reasons, economic or otherwise, which make it more feasible [to seek the variance] than to use alternative [sites]” (*Matter of Consolidated Edison Co. of N.Y. v Hoffman*, 43 NY2d at 611; see *Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 372 [Holding “*Matter of Consolidated Edison (supra)*, applies to all public utilities. It also applies to entirely new sitings of facilities, as well as the modification of existing facilities”]). The Court of Appeals has further held that ““where the intrusion or burden on the community is minimal, the showing required by the utility should be correspondingly reduced”” (*Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 372, quoting *Matter of Consolidated Edison Co. of N.Y. v Hoffman*, 43 NY2d at 611; see *Sprint Spectrum, L.P. v Zoning Bd. of Appeals of the Town of Guilderland*, 173 Misc 2d 874, 877 [Sup Ct, Albany County 1997, Graffeo, J.] [Holding “to obtain a use variance, the petitioner must demonstrate that the site is necessary to provide safe and adequate service and that there are compelling reasons, economic or otherwise, to obtain the variance. Moreover, where the burden on the community is minimal, the showing required by the utility should be correspondingly reduced”]).

In determining what applicants are subject to the public utility standard, courts do not apply a rigid rule (see *Matter of Nextel Partners v Town of Fort Ann*, 1 AD3d 89, 93 [3d Dept 2003] [Holding a “case-by-case” analysis of changes in industries and regulations may impact the viability of the rationale underlying the public utility exception, but deregulation and competition alone do not prevent an applicant from being a public utility], *lv denied* 1 NY3d 507 [2004]) “A ‘public utility’ has been defined to mean ‘a private business, often a monopoly, which provides services so essential to the public interest as to enjoy certain privileges such as eminent domain

and be subject to such governmental regulation as fixing of rates, and standards of service” (*Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 371, quoting 2 Anderson, *American Law of Zoning* § 12.32, at 568-569 [3d ed]). “Characteristics of the public utility include (1) the essential nature of the services offered which must be taken into account when regulations seek to limit expansion of facilities which provide the services, (2) ‘operat[ion] under a franchise, subject to some measure of public regulation,’ and (3) logistic problems, such as the fact that ‘[t]he product of the utility must be piped, wired, or otherwise served to each user . . . [,] the supply must be maintained at a constant level to meet minute-by-minute need[, and] [t]he user has no alternative source [and] the supplier commonly has no alternative means of delivery” (*id.*). “There is usually no question that the activities of heavily regulated electric and gas companies and their energy generation and transmission projects and facilities involve the activities of public utilities” (4 Rathkopf’s *The Law of Zoning and Planning* § 78:9 [4th ed.], citing *Matter of West Beekmantown Neighborhood Assn., Inc. v Zoning Bd. of Appeals of Town of Beekmantown*, 53 AD3d 954, 956 [3d Dept 2008] [Holding zoning board rationally found that wind turbines were “public utility”]; see *Matter of Wind Power Ethics Group (WPEG) v Zoning Bd. of Appeals of Town of Cape Vincent*, 60 AD3d 1282, 1283 [4th Dept 2009] [Holding zoning board’s classification of wind-powered generators as a utility was neither irrational nor unreasonable, and that the determination is supported by substantial evidence]).

### III. Discussion

Respondent asserts that Petitioners’ solar facility is not a public utility for zoning purposes. Respondent also argues that the Town of Athens zoning ordinance does not address public utilities



and its definition of “essential services”<sup>1</sup> is narrower than that interpreted to support wind turbines as public utilities (*compare Matter of Wind Power Ethics Group (WPEG) v Zoning Bd. of Appeals of Town of Cape Vincent*, 60 AD3d at 1283). Additionally, Respondent contends that Petitioners cannot be considered a utility because they do not meet the test under *Matter of Cellular Tel. Co. v Rosenberg* since they do “not hold a monopoly on the provision of a particular service”; do “not have the power of eminent domain; there is nothing unique about the essential nature of its services that requires mandatory placement in one specific area; while operators of such facilities are lightly regulated by the [Public Service Commission], the applicant does not operate under a franchise; and finally, solar generating facilities are not subject to the same logistical problems as true public utilities with respect to location and alternative sources and means of delivery.” Finally, Respondent maintains that even assuming the applicability of the public utility standard, it must be held as a “gap” test, that is it would only be applicable if an applicant could show a gap in service that needs to be filled (*citing* 2 Salkin, *New York Zoning Law and Practice* § 12:03 [4th ed. 2011]).

Contrary to Respondent’s assertion that “electricity is an essential service - is well settled” (Patricia E. Salkin and Robert Burgdorf, *Siting Wind Farms in New York: Applicability of the Relaxed Public Utility Standard*, *New York Zoning Law and Practice Report* vol. 7, No. 1.; *see generally Berg v Chelsea Hotel Owner, LLC*, 203 AD3d 484 [1st Dept 2022] [Listing, in a different context, “essential services” as “heat, hot water, gas, and electricity”]). “While ‘public utility’ is not defined by the zoning law at issue, it is undisputed that the [facility that Petitioners] intend[]

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<sup>1</sup> Code of the Town of Athens 180-3 provides “Essential Services: The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, traffic signals, hydrants, street signs and similar equipment and accessories in connection therewith, but not including buildings, unless specifically permitted by special permit, and reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare”.

to construct will generate energy, a useful public service, and will be subjected to regulation and supervision by the Public Service Commission” (*Matter of West Beekmantown Neighborhood Assn., Inc. v Zoning Bd. of Appeals of Town of Beekmantown*, 53 AD3d at 956; see Public Service Law § 2 [2-b] [Stating that the “term ‘alternate energy production facility,’ . . . includes any solar (facility) . . . together with any related facilities located at the same project site, with an electric generating capacity of up to eighty megawatts, which produces electricity, gas or useful thermal energy”]; see also Public Service Law § 2 [12], [23]; 5 [1] [b]; 66-c [1]). That the solar energy industry is not subject to an exclusive franchise does not prevent the application of the relaxed standard (see *Matter of Nextel Partners v Town of Fort Ann*, 1 AD3d at 93). Nor is the power of eminent domain the sole defining feature of a public utility (see *Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d at 371). While Respondent argues that Petitioners’ facility does not face the same logistical challenges as “true public utilities,” the record includes a Central Hudson Capacity Map showing distribution system locations throughout the area supporting Petitioners’ assertion that the location is subject to the logistic problems contemplated by *Matter of Cellular Tel. Co. v Rosenberg* (82 NY2d at 371) [NYSCEF Doc No 33].<sup>2</sup>

Finally, Respondent’s assertion that Petitioners must meet a “gap” test in a manner similar to a cellular provider (see *Matter of Independent Wireless One Corp. v City of Syracuse*, 12 AD3d 1085, 1086 {4th Dept 2004}) is unavailing. In *Matter of Consolidated Edison Co. v Hoffman*,

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<sup>2</sup> Beyond Respondent’s conclusory assertion that solar can be located anywhere and Petitioners’ evidence in the record regarding infrastructure limitations, property law generally has begun recognizing the variable rights, and impacts, associated with solar energy and real property (see e.g. Brent Resh, Note, *Something New Under the Sun: The Drecp and Utility-Scale Solar on the New Energy Frontier*, 18 Nev LJ 317, 333-335 [2017] [Discussing the limitations of economics and infrastructure in siting large scale solar creating theoretical “renewable parcels” or “solarsheds”]; Hannah Wiseman, *Expanding Regional Renewable Governance*, 35 Harv Envtl L Rev 477, 511-512 [2011] [Recognizing that a “large wind or solar farm is useless if not connected to a transmission line that carries the electricity generated to consumers]).



respondent in that case denied an application by Consolidated Edison Company for a variance for the construction of a wet cooling tower for its nuclear generating plant (43 NY2d at 611). The Court of Appeals did not look solely to a coverage gap relating only to the municipality making the determination, but instead considered the broader “potential hardship to Con Edison’s approximately three million customers, and millions of others affected” (*id.* at 609). In considering the necessity of the variance, the Court of Appeals noted that “operation of the plant saved Con Edison customers \$78,000,000 in fuel expense . . . [and if the variance were denied and the facility] closed down[,] additional fuel costs to make up the lack of generation by increasing production at its other plants, all of which burn imported oil, would translate to \$567,000 per day . . . approximately 7,300,000 barrels of oil or equivalently 306,600,000 gallons” in a year (*id.* at 608). Similarly, the test for an electrical public utility, such as in this case, is not that there is “no other public utility provider available that could provide access to the proposed utility service . . . [and that] the locality not already served by another service provider” as urged by Respondent [NYSCEF Doc 46, p 9], but public necessity must be viewed in a broader consideration of the general public’s need for the service.

#### IV. Conclusion

Because Respondent erred by applying the general standard set under Town Law § 267-b rather than the test for a use variance set forth in *Matter of Consolidated Edison Co. v Hoffman*, the determination is hereby vacated, and the matter is remitted for Respondent to reconsider Petitioners’ application with the appropriate test in mind (*see generally Matter of Nye v Zoning Bd. of Appeals of Town of Grand Is.*, 81 AD3d 1455, 1456 [4th Dept 2011]; *Millpond Mgt., Inc. v Town of Ulster Zoning Bd. of Appeals*, 42 AD3d 804, 806 [3d Dept 2007]).

Finally, in light of the foregoing, while the record reflects that an executive session was held that may have constituted a technical violation of the Open Meetings Law (Public Officers Law art 7), the Court finds this insufficient to warrant the award of attorney fees (*see Matter of Nextel Partners v Town of Fort Ann*, 1 AD3d at 96).

Accordingly, it is

**ORDERED**, that the petition is hereby **partially granted** to the extent that Respondent's determination is annulled and the matter is remitted to Respondent for further proceedings not inconsistent with this Court's decision; and it is further

**ORDERED**, the petition is **partially denied and dismissed**.

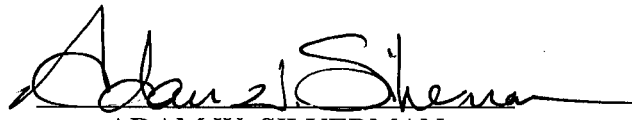
The Court has uploaded the original Decision/Order to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the County Clerk.

Counsel for Petitioners is not relieved from the applicable provisions of CPLR 2220 and 202.5b (h) (2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action/proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

**SO ORDERED AND ADJUDGED**

**ENTER.**

Dated: August 18, 2022  
Catskill, New York

  
ADAM W. SILVERMAN  
Acting Justice of the Supreme Court

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TOWN OF BINGHAMTON  
ZONING BOARD OF APPEALS

JUN 15 2022

TOWN OF BINGHAMTON  
VICKIE A. CONKLIN  
TOWN CLERK

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In the Matter  
Of the  
Application by  
ATLAS RENEWABLES LLC  
for a public utility use variance  
affecting property known as  
57 Powers Road, Binghamton, New York  
Tax Map No.: 161.14-1-35.11

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**DECISION**

Atlas Renewables LLC/Binghamton Solar, LLC, with consent and authorization of the property owner, having filed an application for a public utility use variance with the Zoning Board of Appeals, with respect to the construction of a 5.00 Megawatt Community Solar Farm on the property located at 57 Powers Road, Binghamton, New York owned by Robert Haskell, and the Zoning Board of Appeals having caused due notice of a public hearing on the said application to be duly published, posted and served, and having conducted a public hearing on the application of Atlas Renewables LLC on November 8, 2021 which public hearing was kept open through the December 13, 2021 meeting; and regular zoning board meetings were held to discuss the application of Atlas Renewables LLC on; January 10, 2022; February 14, 2022, April 18, 2022 and May 9, 2022, and having heard all of the evidence presented relating to the public utility use variance required by law to be considered in granting or denying such a public utility use variance, the Zoning Board of Appeals hereby makes the following findings and decision. Present for said meetings were Members Gerardo Tagliaferri, Mark Bordeau, Theresa Taro, Tom Bensley, and alternate member Timothy Cooper. Zoning Board Member, Sara Reifler, recused herself at the meeting on November 8, 2021 and did not participate in any of the meetings or public hearing.

### FINDINGS OF FACT

1. That Robert D. Haskell is the owner-landlord of 57 Powers Road, Binghamton, New York, hereinafter referred to as the “Premises” and is hereby bound by this Decision.
2. That Atlas Renewables LLC is the general contractor and Applicant for the Premises.
3. That the Premises is located in a district zoned R-1 according to the Town of Binghamton Zoning Map.
4. That the Applicant seeks to construct a 5.00 Megawatt Community Solar Farm upon obtaining a public utility use variance given to certain public utility related projects across NYS, which if granted, would then require site plan approval through the Planning Board.

### DECISION

The Applicant filed a timely application for a public utility use variance and has standing as the Lessee of the Premises, together with the Owner-Landlord of the Premises. The provisions of the State Environment Quality Review Act apply to this project. Timely notice of the November 8, 2021 public hearing was duly published, posted and served. A public hearing was convened on November 8, 2021 at which time the Applicant and any other interested parties were given an opportunity to present evidence relevant to the application. The public hearing was continued on December 13, 2021 which notice was duly published, posted and served. The continuation of the public hearing was convened on December 13, 2021 at which time the applicant and any other interested parties were given an opportunity to present evidence relevant to the application. The public hearing was closed on December 13, 2021. The Zoning Board of Appeals meeting was continued on January 10, 2022 at a regularly scheduled Board meeting at which time the Applicant and the Board members discussed a list of potential issues related to



the application and SEQR part 1. The applicant was given further opportunity to present evidence relevant to the Application. The meeting was continued on February 14, 2022 at a regularly scheduled Board meeting which was convened on February 14, 2022 at which time the Applicant and the Board members discussed a list of potential issues related to the application and SEQR part 2. The Board meeting was continued on April 18, 2022 which notice was duly published, although not required, and, posted. The continuation of the Zoning Board of Appeals meeting was held on April 18, 2022 at which time the Applicant and the Board members continued the discussion related to SEQR part 2. The Board meeting was continued on May 9, 2022 which notice was duly published, posted and served. On May 9, 2022 the Applicant and the Board members continued discussion related to SEQR part 3, and any other interested parties were given an opportunity to present evidence relevant to the Application. The Applicant had previously presented evidence of the statutory factors required for the granting of a public utility use variance, and reviewed those factors again with the Board.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the public hearing in person and David Brennan (Atlas-Applicant Attorney) attended the public hearing via zoom on November 8, 2021. Residents Tami Zebrowski-Darrow, Michael Bensley, Bill Miller & Bill Miller Jr., Gary & Barbara Sanford, Carolyn Cavallaro, Ruth McCormick, Charrie Stymacks, Gary Taubar, Joan & Stephen Zahorian, Teresa Quain, Anthony Restin attended the public hearing in person and Lisa Young attended via zoom on November 8, 2022. The members of the public listened to the presentation by the Applicant and raised questions, comments and concerns. Generally speaking, the public did not voice opposition to the proposed project and some voiced support for green energy.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the meeting in person and David Brennan (Atlas-Applicant Attorney) attended via zoom on the December 13, 2021 continued hearing. Residents Gary Taubar, Tami Zebrowski-Darrow, Carolyn Cavallaro, Gary Sanford, Barbara Sanford, Ruth McCormick attended the continued public hearing in person on December 13, 2021.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the meeting in person and David Brennan (Atlas-Applicant Attorney) attended via zoom on January 10, 2022. Other than some elected officials, no members of the public directly participated.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), Robert Haskell (Owner-Applicant) attended the ZBA meeting in person and David Brennan (Atlas-Applicant Attorney) attended via zoom on February 14, 2022. Other than some elected officials, no members of the public directly participated.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), David Brennan (Atlas-Applicant Attorney), and Robert Haskell (Owner-Applicant) attended the ZBA meeting in person and on April 18, 2022. Other than some elected officials, no members of the public directly participated.

Lluis Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), David Brennan (Atlas-Applicant Attorney), attended the Board meeting in person on May 9, 2022. At no time did any members of the public present any opposition to the proposed project and no one presented any documentary evidence in opposition to the request for the said public utility use variance.

The Zoning Board of Appeals again reviewed part 1 and part 2 of SEQR for this proposed project. The Zoning Board of Appeals then voted 5-0 that there was no significant



environmental impact with respect to said proposed project that could not be mitigated by actions on the part of the Applicant and Landowner. Accordingly, the Zoning Board determined there was a negative declaration with respect to SEQR provided certain mitigation efforts were implemented by the Applicant and Landowner.

Based on the list of issues developed by the Zoning Board of Appeals, it appears that all issues, concerns and questions initially raised by the public were satisfactorily answered. Over the course of the Board meetings after the public hearing was closed, the Board deliberated, and discussed the various factors and underlying facts, including applying said proof to the applicable legal factors that must be considered in determining an application for a public utility use variance. The Board determined that granting the public utility use variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.

The Zoning Board of Appeals considered the specific factors or criteria for a public utility use variance approval, including the following:

- 1) Will the project provide an essential service, namely a) energy required to render safe and adequate electrical service to the local electric grid and b) compelling reasons, economic or otherwise, for a need for such a variance,
- 2) Will the generation of electricity through the proposed solar energy facility be regulated by the Public Service Commission, or by or through any other public regulations,
- 3) Will the electricity to be generated go into the regulated electric grid system in New York State.
- 4) Is there a lack of any other alternative viable locations in the Town for such a project.

The Zoning Board of Appeals having duly considered the evidence and proof presented with respect to said factors in their deliberations prior to voting, and also in consideration of the fact that there was no public opposition made to the requested variance. As a result, the Board then took up a motion by member Mark Bordeau, seconded by member Timothy Cooper. The Board then voted to approve the public utility use variance by a vote of four ayes and one nay as follows: Chairman, Gerardo Tagliaferri, aye; Theresa Taro, aye; Mark Bordeau, aye; Tom Bensley, nay; and Timothy Cooper, aye.

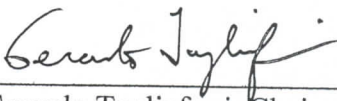
Based on all of the evidence and proof presented, and for the reasons stated above, the application for said public utility use variance was granted with the following conditions:

- 1) The Applicant and any successor or assign shall maintain the buffer as shown on the revised plan drawing submitted to the Board.
- 2) If the buffer is disturbed in any manner during construction/development, the Applicant shall be responsible for all replacement plantings to establish and maintain the buffer.
- 3) Additional plantings and screening shall be placed in the areas where the Orchard Park area is visible from the project development boundary.
- 4) All plantings or new screening to make up the buffer or to supplement the buffer shall be deer resistant.
- 5) To extent permitted by law, the Town of Binghamton residents shall have priority for solar energy from this solar development.
- 6) Any decommissioning by the Applicant, or any successors and assigns, shall be performed in accordance with the Town's Solar Local Law and any applicable New York State law.



7) All conditions herein shall also be the responsibility of any successor or assign of the Applicant Atlas Renewables LLC/Binghamton Solar LLC.

Dated: June 14, 2022

  
\_\_\_\_\_  
Gerardo Tagliaferri, Chairman

At a Regular Monthly Meeting of the Zoning Board of Appeals held in and for the Town of Oswego on the 19<sup>th</sup> day of January, 2023, at 7:00 p.m. at the Town Hall located at 2320 County Route 7, Oswego, NY.

**STATE OF NEW YORK    COUNTY OF OSWEGO  
TOWN OF OSWEGO    ZONING BOARD OF APPEALS**

In the Matter of an Application by

Oswego PV, LLC

For A Use Variance to Operate a 3-MWAC solar farm at 447 County Route 20, Residential 3 (R3) District pursuant to the Zoning Law of the Town of Oswego, New York

**RESOLUTION**

**WHEREAS**, Oswego PV, LLC, a subsidiary of RIC Development, LLC (the “Applicant”) has applied for a use variance to operate a 3.0MWac solar farm (the “Project”) on property owned by Constance Simmons located at 447 County Route 7 (Tax Parcel No. 164.00-06-02.08) in the Town of Oswego’s Residential 3 (R3) Zoning District; and

**WHEREAS**, a use variance application was submitted by letter dated September 8, 2022, together with a comprehensive packet of materials that included, among other items, a site plan, evidence of site control, a visual impact assessment, Full Environmental Assessment Form (FEAF), Wetland study, Stormwater Pollution Prevention Plan (SWPPP), various state and federal agency determinations, a Coordinated Electric System Interconnect Review (CESAIR) from National Grid, and a Decommissioning Plan, (collectively the “Special Use Permit Application”); and

**WHEREAS**, all documentation contained in the Special Use Permit Application has been reviewed by the Zoning Board of Appeals (“ZBA”), in addition to the Use Variance application for consideration of a use variance as the result of the absence of a solar energy facility being specifically permitted within the Town of Oswego<sup>1</sup>; and

**WHEREAS**, the provisions of GML §239 l & m are triggered by the Project and therefore the use variance application together with the Special Use Permit Application packet were provided by the Town of Oswego Planning Board to the County of Oswego Planning Department for its recommendation; and

<sup>1</sup> The Town of Oswego Zoning Law does not reference any renewable energy facilities, having been adopted and revised prior to the influx of such facilities that are now commonplace in New York State; accordingly, a use variance is required before a special permit/site plan approval is considered.



**WHEREAS**, the County of Oswego reviewed the Project and in a letter dated October 10, 2022, recommended denial without prejudice, reasoning that the packet of materials submitted contained no evidence that the “applicable zoning regulations and restrictions have caused unnecessary hardship”<sup>2</sup> and declared that “the ZBA can submit evidence documenting the [sic] that the zoning regulations have created unnecessary hardship; and we will reconsider the application by the ZBA for a use variance, and planning board for site plan review and special permit[;]” and

**WHEREAS**, a joint public meeting of the Town’s ZBA and Planning Board was held on October 17, 2022, at which point several members of the public attended and provide various comments opposed to the proposed use variance and the Project in general; and

**WHEREAS**, the Applicant submitted additional supplemental materials to address many of the concerns of the residents and property owners near the proposed solar farm location, and further addressed the applicable use variance criteria the Courts of this State have applied to renewable energy projects (mostly wind and solar facilities), declaring such projects to be public utilities and thus reviewable under the less-restrictive *Hoffman*<sup>3</sup> standard of review, which was recently applied by the New York State Supreme Court in a legal proceeding involving the neighboring Town of Minetto<sup>4</sup>; and

**WHEREAS**, during a separate meeting, the Planning Board declared itself lead agency pursuant to SEQRA and began reviewing the FEAF submitted by the applicant, and the ZBA having also considered the environmental impacts of granting a use variance communicated its position on potential impacts on the environment and thereafter were notified that the Planning Board carefully considered such impacts and determined no significant impacts to the environment will occur as a result of the Project and the issued a Negative Declaration on January 16, 2023; and

**WHEREAS**, based on the *Hoffmann* use variance standard, as well as the completeness of the application, the ZBA hereby declares that it has sufficient information before it to make a determination on the application for use variance for the Project;

**NOW, THEREFORE**, upon motion made by board member Palm and seconded by board member Lorenz it is and shall hereby be

---

<sup>2</sup> For reasons set out in this resolution and supplemental materials submitted by Applicant, the standard of review for a use variance for a public utility was incorrectly applied by the County of Oswego initially, but later correctly applied resulting in its letter recommendation dated November 18, 2022 to approve the Project.

<sup>3</sup> Consolidated Edison Co. of New York v. Hoffmann, 43 N.Y.2d 598 (1978), the NYS Court of Appeals holding that public utilities are subject to a more lenient standard when seeking a use variance. Public utilities can demonstrate entitlement to a variance by showing that the proposed “modification is a public necessity...required to render safe and adequate service...[and]...where the intrusion or burden on the community is minimal.” *Id.* at 610.

<sup>4</sup> See, Cipriani Energy Group Corp. v. Zoning Board of Appeals of the Town of Minetto, et al. (Index No. EFC-2022-0043), J. Gilbert, April 13, 2022.

**RESOLVED**, that the use variance application submitted by Oswego PV, LLC is approved as submitted for the following reasons:

- 1. The Project is a public utility and thus is afforded the standard of review for a use variance articulated in *Hoffmann*;
  - a. By its very nature, clean energy is a public necessity as proclaimed by the State of New York in its Clean Energy Standard and further codified in the Climate Leadership and Community Protection Act; and
  - b. based on the environmental review the impacts on the community are minimal; and it further

**RESOLVED**, that the use variance application submitted by Oswego PV, LLC is approved as submitted upon the following conditions:

- 1. Follow the conditions contained in any resolution by the Town of Oswego Planning Board approving the site plan and special permit<sup>5</sup>;
- 2. Follow all applicable federal, state, and local laws governing the construction and use of the property as a solar farm; and
- 3. Present the Town of Oswego with proof that a decommission bond or fund is established for the benefit of the Town and the property owner for the removal of the solar arrays and the return of the property to its pre-solar farm condition, and such bond or fund is periodically renewed to ensure the decommissioning costs are appropriate.

The motion having been placed before the Zoning Board of Appeals for a vote was adopted/defeated by a vote of 3 in favor, 2 opposed, and 0 abstained/recused in accordance with the following roll call vote:

DEBRA SHOENFELT-JASKULA, CHAIR	YES
ROBERT BAKER	YES
KENNETH KRAPP	NO
TRICIA LORENZ	NO
COLIN PALM	YES

---


<sup>5</sup> The ZBA strongly recommends that every consideration be given to utilizing access to the solar farm from County Route 7 through the Town of Oswego Highway Garage property to minimize or eliminate vehicle safety concerns should access to the property be gained solely from County Route 20. The Town Board is encouraged to grant the applicant the necessary easement to permit access through the town's property.



# CERTIFICATION

**I HEREBY CERTIFY** the above to be a full, true and correct copy of a Resolution duly adopted by the Zoning Board of Appeals of the Town of Oswego, on the date mentioned, in accordance with the vote recorded above.

Dated: January 23, 2023

  
KATHY DELANEY  
SECRETARY  
ZONING BOARD OF APPEALS

**EXHIBIT B**



Parcel Address	Landowner	Tax ID	Zoning District	Parcel Size (Acres)	Distance from Circuit	Reason why Project is not Feasible
870 Snyder Road	Cayuga Operating Co.	11.-1-3.212	IR	400.52	8 miles	Too far from circuit.
39 Village Circle	Cayuga Operating Co.	11.-1-3.211	IR	54	8 miles	Too far from circuit.
Ridge Road	Portland Point LLC	36.-1-8.1	IR	23.36	3.7 miles	Too far from circuit.
	Cayuga Crushed Stone Inc	36.-1-9.2	IR	232.13	.8 miles	Active gravel mine onsite.
	Cayuga Crushed Stone Inc	35.-1-1.2	IR	59.89	.8 miles	Active gravel mine onsite.
87 Portland Point Road	Cargill Inc	36.-1-1	IR	127.02	3.5 miles	Too far from circuit; existing warehouse onsite.
	Cargill Inc	35.-3-1.2	IR	102.38	1.16 miles	Active gravel mine onsite.
191 Portland Point Road	Cayuga Crushed Stone Inc	35.-1-4.2	IR	14.3	1.62 miles	Parcel too small to accomodate Project.
Drake Road	Cargill Inc	35.-3-16	IR	10.6	1.62 miles	Parcel too small to accomodate Project.
	Lansing Town Wat Dist #1	30.-1-16.12	IR	17.14	.65 miles	Parcel too small; existing buildings onsite.
Portland Point Road	Cornell University	44.-1-50.2	IR	199.14	On site	Landowner not interested.
11 Portland Point Road	Lucente Homes LLC	39.-1-38.2	IR/R2	98.12	.29 miles	Landowner not interested.
Warren Road	Cornell University	44.-1-7	IR	67.8	On site	Landowner not interested; wetlands onsite.
Warren Road	Cornell University	44.-1-6	IR	47	500 ft	Landowner not interested; wetlands onsite.
Cherry Road	Borgwarner Ithaca, LLC	44.-1-53.2	IR	40.5	.46 miles	Parcel too small; existing warehouses onsite.
880 Warren Road	Borgwarner Ithaca, LLC	44.-1-53.11	IR	13.59	.18 miles	Parcel too small; existing warehouse onsite.
Farrell Road	County of Tompkins: Airport Administration	44.-1-47	IR	46.8	On site	Landowner not interested.
Farrell Road	County of Tompkins	44.-1-43.3	IR	15.45	.2 miles	Landowner not interested.
Sapsucker Woods Road	County of Tompkins	44.-1-43.3	IR	11.21	.3 miles	Landowner not interested.
	County of Tompkins	44.-1-20.1	IR	26.9	.2 mi	Landowner not interested.
	New York State	44.-1-20.3	IR	15.55	On site	Parcel too small; existing buildings onsite.
	Michael Moravec	39.-1-42	IR	85.96	2.08 miles	Landowner not interested; no road frontage (landlocked).
	Ed Collins	44.-1-49	IR	10.65	.5 miles	Parcel too small to accomodate Project.
	Ed Collins	39.-1-49	IR	12	0.5 mi	No road frontage.
	Cornell University	44.-1-8	IR	20	2 miles	Landowner not interested; no road frontage (landlocked).
	Cornell University	44.-1-51	IR	10.67	2.2 miles	Landowner not interested; no road frontage (landlocked).
	Tompkins County IDA	49.-1-50.10	IR	11.92	On site	Parcel too small; existing buildings onsite.





## APPENDIX A SITE PHOTOGRAPHS

DRAFT





**Photo Log**  
**Unlisted address on N Triphammer Road, Ithica, New York**  
**PWGC Project #DRS2404**



Photo 1- View of subject property from access road along N Triphammer Road.







Photo 2 – West border of the SW Field, view to the north.



Photo 3 – Representative field conditions throughout the property.





Photos 4 & 5 –

Photo 4 - View of drainpipe and stream in the south-central portion of the property.,  
Photo 5 - View of standing water on the southern portion of the property.





Photo 6 - View of the hunting deer stand at west border of the SE portion of the property.



Photo 7 - View of the vegetated area on the east portion of the property.





Photo 8 – View of the central portion of the property.



Photo 9 – View of the solid waste disposal identified in the central portion of the property.





Photo 10 – View of solid waste disposal identified in central portion of the property.



Photo 11 – View of the solid waste disposal identified in the central portion of the property.





Photo 12 – View of the adjacent property to the south improved with one single-family residential dwelling.



Photo 13 – View of residential dwelling north of access road, view to the northwest.





Photo 14- View of N Triphammer road, view to the south.



Photo 15 – View of N Triphammer Road, view to the north.



Photo 16 – View of N Triphammer Road and Landscaping Business, view to the west.

DRAFT





1 Deed  
Rec 09/12/44  
L 272 P 238  
Tax Lot 44.-1-3.3

Section 3, Item d.

~~of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. And the grantor will hold the right to receive such consideration as a trust fund to be applied for the purpose and in the manner aforesaid.~~

~~IN WITNESS WHEREOF, the party of the first part has hereunto set her hand and seal the day and year first above written.~~

~~Jessie P. Shaw L.S.~~

~~U.S.I.R. \$6.05~~

~~STATE OF NEW YORK )  
COUNTY OF TOMPKINS) SS..~~

~~On this 12 day of September Nineteen Hundred and forty-four before me, the subscriber, personally appeared Jessie P. Shaw to me personally known and known to me to be the same person described in and who executed the within Instrument, and she duly acknowledged to me that she executed the same~~

~~Harold E. Simpson  
Notary Public~~

~~Recorded September 12, 1944 at 10:55 A. M.  
City Stamp~~

*H. G. Morris* CLERK.

Delta Knettles, Ind. :  
& as Exrx. :  
to :  
Lester J. Milligan &c. :  
----- X

THIS INDENTURE, Made the 12th day of June, Nineteen Hundred and Forty-four. BETWEEN DELTA KNETTLES, of the Town of Lansing, Tompkins County, New York, individually and as Executrix of the last Will and Testament of JOHN P. KNETTLES, late of the Town of Lansing, Tomp-

kings County, New York, deceased, party of the first part, and LESTER J. MILLIGAN and VIOLA MILLIGAN, his wife, of the same place, as tenants by the entirety, parties of the second part:

WITNESSETH, That the party of the first part, by virtue of the power and authority to her given in and by the said last Will and Testament, and in consideration of ONE Dollar, (\$1.00 &c.) lawful money of the United States, to her in hand paid by the parties of the second part, does hereby grant and release unto the parties of the second part, the survivor thereof his/her heirs and assigns forever,

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lansing, County of Tompkins, and State of New York, and being part of Lots Nos. 92 and 95 in said Town, and bounded as follows: Bounded on the west by the center of the highway leading from Asbury Church to Ithaca; bounded on the north by lands owned or occupied by Anthony Dutch, and formerly owned by William Drake; bounded on the east by lands of James Krizek and bounded on the south by lands of Fred R. McGraw, Sr. and containing about fifty (50) acres of land, be the same more or less.

Being the same premises conveyed to party of the first part by Fred R. McGraw, Jr. and Nina McGraw by deed recorded in the Tompkins County Clerk's office in Liber 243 of Deeds at page 42.

This conveyance is subject to a right of way heretofore granted to the New York State Electric & Gas Corporation by deed recorded in said Clerk's office in Liber 239 of Deeds at page 106, and also subject to any rights which the public may have in the highway adjoining, and also subject to a right of way heretofore given to the Ovid Electric Company by right of way recorded in said Clerk's office in Liber 5 of Miscellaneous Records at page 83.

TOGETHER with the appurtenances, and also all the estate which the said Testator had at the time of his decease, in said premises, AND ALSO the estate therein, which the party of the first part has or has power to convey or dispose of, whether individually, or by virtue of said Will or otherwise.

TO HAVE AND TO HOLD the premises herein granted unto the parties of the second part, the survivor thereof his/her heirs and assigns forever.

AND the party of the first part covenants that she has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

IN WITNESS WHEREOF, the party of the first part has hereunto set her hand and seal the day and year first above written.

US.I.R. \$1.65

Delta Knettles L.S.  
Individually and as executrix of  
John P. Knettles

STATE OF NEW YORK )  
COUNTY OF TOMPKINS ) SS.:

On this 19th day of June, Nineteen Hundred and Forty-four before me, the subscriber, personally appeared Delta Knettles the Executrix of the last Will and Testament of John P. Knettles to me personally known and known to me to be the same person described in and who executed the within Instrument, and she duly acknowledged to me that she executed the same individually and as such Executrix as aforesaid for the purposes therein mentioned.

B. F. Sovocool  
Notary Public.

Recorded September 12, 1944 at 1:35 P. M.

*H. G. Hoover* CLERK.

~~Frank Teeter : THIS INDENTURE, Made the 11th day of September, Nineteen  
to : Hundred and Forty-four, BETWEEN FRANK TEETER, residing in  
Gordon Washburn &c. : the Village of Trumansburg, County of Tompkins and State of  
- - - - - X New York, party of the first part, and GORDON WASHBURN AND  
ELLEN WASHBURN, husband and wife, with right of survivorship, survivor to take the whole, re-  
siding at 323 1/2 Cascadilla Street, in the City of Ithaca, New York, parties of the second part,~~

~~WITNESSETH, that the party of the first part, in consideration of One Dollar (\$1.00) law-  
ful money of the United States, paid by the parties of the second part, does hereby grant and  
release unto the parties of the second part, their heirs and assigns forever,~~

~~ALL THAT TRACT OR PARCEL OF LAND in the Town of Newfield bounded and described as follows:  
Commencing at a point in the west line of the highway known as the Newton Road at the southeast  
corner of lands heretofore conveyed to Dora M. Teeter by deed recorded in Tompkins County Clerk's  
office in Liber 248 of Deeds at page 403, running thence southerly along the west line of said  
highway a distance of 175 feet to an iron stake; running thence westerly in a line parallel  
with the southerly line of said lands of Dora M. Teeter a distance of 250 feet to an iron stake;  
running thence northerly in a line parallel with the west line of said highway 175 feet to the  
southerly line of said lands of Dora M. Teeter; thence easterly along said southerly line of  
said lands of Dora M. Teeter a distance of 250 feet to the place of beginning, containing one  
acre of land, be the same more or less. Being the same premises conveyed to party of the first  
part by Robert McGuire by deed dated January 14, 1939, and recorded in the Tompkins County  
Clerk's office on January 21, 1939, in Liber 249 of Deeds at page 477.~~

~~TOGETHER with the appurtenances and all the estate and rights of the party of the first  
part in and to said premises,~~

~~TO HAVE AND TO HOLD the premises herein granted unto the parties of the second part, their  
heirs and assigns forever.~~

~~AND said party of the first part covenants as follows:~~

~~FIRST, That the parties of the second part shall quietly enjoy the said premises;~~

~~SECOND, That said party of the first part will forever WARRANT the title to said premises.~~

~~THIRD, That the grantor will receives the consideration for this conveyance and will hold  
the right to receive such consideration as a trust fund to be applied first for the purpose of  
paying the cost of any improvement, and that the grantor will apply the same first to the pay-  
ment of the cost of improvement before using any part of the total of the same for any other~~



2 Easement  
Rec 03/04/36  
L 239 P 106

DEEDS No. 239

106

~~Head, and Mabel M. Howland to be the individuals described in and who executed the foregoing Instrument; that he said subscribing witness was present and saw them execute the same; and that he said witness at the same time, subscribed his name as witness thereto.~~

~~M. C. Avery, Notary Public.~~

~~Recorded March 4, 1936 at 5:00 P.M.~~

~~H. O'Connell CLERK~~

Nina McGraw et al : NEW YORK STATE ELECTRIC & GAS CORP ITHACA DOCUMENT FILE  
to : Ithaca RWC 197  
New York State Electric : THE UNDERSIGNED hereinafter called the GRANTOR, being the owner  
& Gas Corporation : of or having an interest in land situate in the Town of Lansing  
----- X  
County of Tompkins, State of New York, fronting on the street or highway known as Kline, formerly  
Lansing Road and bounded on the south by the land of Fred Magraw and on the north by the land  
of Tony Dutche (Deutsch). IN CONSIDERATION of \$1.00 paid by the Grantee, hereby grants and  
releases unto the New York State Electric & Gas Corporation a corporation organized under the  
laws of the State of New York, having its principal office at Ithaca, N.Y. herein called the  
GRANTEE, its successors and assigns, the right, privilege and authority to construct, reconstruct  
extend, operate, inspect, maintain and at its pleasure remove a pole line with the necessary  
wires, cross arms, guy wires, braces and other fixtures or appurtenances used or adopted for the  
transmission and/or distribution of electric current for public or private use, upon and over  
said land and property and/or the highways abutting or running through said land. Poles to be  
set on cross line fences only. This right of way includes the service lines to house, service  
entrance, to be built at grantees expense & free to grantor.

TOGETHER with the right to trim, cut and remove trees and brush to the extent necessary to clear said wires and pole line by at least 15 feet.

PROVIDED, however, that any damage (other than for cutting, trimming or removing trees, as above provided) to the property of the Grantor, caused by the Grantee, in constructing or repairing said line, shall be borne by the Grantee.

DATED this 5 day of Oct 1935.

IN PRESENCE OF:

C. O. Prowse  
Subscribing Witness  
C. O. Prowse  
Subscribing Witness  
C. O. Prowse  
C. O. Prowse

Nina McGraw L.S.  
Fred McGraw L.S.  
Delta H. Knettles Mortgagee  
Charles H. Blood "

(Subscribing Witness Acknowledgment)

STATE OF NEW YORK )  
COUNTY OF TOMPKINS )<sup>ss</sup> On this 5<sup>th</sup> day of October, 1935, before me personally came C.O.  
Prowse the subscribing Witness to the foregoing Instrument with whom I am personally acquaint-  
ed, who being by me duly sworn did depose and say that he resides in Town of Ithaca, that he  
knew Nina McGraw & Fred McGraw to be the individuals described in and who executed the foregoing  
Instrument; that he, said subscribing witness, was present and saw them execute the same; and  
that he, said witness, at the same time subscribed his name as witness thereto.

M. C. Avery, Notary Public.

(Subscribing Witness Acknowledgment)

STATE OF NEW YORK )  
COUNTY OF TOMPKINS )<sup>ss</sup> On this 20<sup>th</sup> day of December 1935, before me personally came C.O.  
Prowse the subscribing witness to the foregoing Instrument, with whom I am personally acquainted  
who being by me duly sworn did depose and say that he resides in Town of Ithaca, that he knew  
Delta H. Knettles and Charles H. Blood to be the individuals described in and who executed the



H51647

DEEDS No. 239

foregoing instrument, that he said subscribing witness, was present and saw them execute the same; and that he, said witness, at the same time, subscribed his name as witness thereto.

M. C. Avery, Notary Public.

Recorded March 4, 1936 at 5:00 P.M.

*H. Daniel* CLERK

DeWitt LaBar & ano. : NEW YORK STATE ELECTRIC & GAS CORP ITHACA DOCUMENT FILE  
to : Ithaca RWC 197.  
New York State Electric & Gas Corporation : THE UNDERSIGNED, hereinafter called the GRANTOR being the  
owner of, or having an interest in land situate in the Town  
----- X  
of Lansing, County of Tompkins, State of New York, fronting on the street or highway known as  
Asbury-Dryden Road and bounded on the west by the land of Joseph Krupa and on the east by the  
land of Howard Hagan. IN CONSIDERATION of \$1.00 paid by the Grantee, hereby grants and releases  
unto the New York State Electric & Gas Corporation a corporation organized under the laws  
of the State of New York, having its principal office at Ithaca, N.Y. herein called the  
GRANTEE, its successors and assigns, the right, privilege and authority to construct, recon-  
struct, extend, operate, inspect, maintain and at its pleasure remove, a pole line with the  
necessary wires, cross arms, guy wires, braces and other fixtures or appurtenances used or  
adopted for the transmission and/or distribution of electric current for public or private  
use, upon and over said land and property and/or the highways abutting or running through said  
land. Line running eastwardly from the lands of Joseph Krupa across grantors property along the  
south side of above named road to the lands of Howard Hagan One pole only on said property,  
near Culvert east of residence.

TOGETHER with the right to trim, cut and remove trees and brush to the extent necessary to clear said wires and pole line by at least 10 feet.

PROVIDED, however, that any damage (other than for cutting trimming or removing trees, as above provided) to the property of the Grantor, caused by the Grantee in constructing or repairing said line, shall be borne by the Grantee.

DATED this 10th day of December 1935.

IN PRESENCE OF  
C. O. Prowse  
Subscribing Witness  
C. O. Prowse  
Subscribing Witness.

DeWitt LaBar L.S.  
Cora LaBar L.S.

(Subscribing Witness Acknowledgment)

STATE OF NEW YORK )  
COUNTY OF TOMPKINS )s On this 10 day of December 1935, before me personally came C.O. Prowse the subscribing witness to the foregoing Instrument, with whom I am personally acquainted, who being by me duly sworn did depose and say that he resides in Town of Ithaca, that he knew DeWitt LeBar & Cora LeBar to be the individuals described in and who executed the foregoing Instrument; that he, said subscribing witness, was present and saw them execute the same; and that he, said witness, at the same time, subscribed his name as witness thereto.

M. C. Avery, Notary Public.

Recorded March 4, 1936 at 5:00 P.M.

*H. Daniel* CLERK



# This Indenture,

LEER 405 PAGE 535

Made the **28<sup>th</sup>** day of **April**  
**Nineteen Hundred and Fifty-eight**

3 Outsale Deed  
Rec 05/09/58  
L 405 P 535

Between

**LESTER J. MILLIGAN SR. and VIOLA MILLIGAN, husband and wife, both of the Town of Lansing, Tompkins County, New York, Individually and as Tenants by the Entirety,**

*parties of the first part, and*

**LESTER JAMES MILLIGAN JR. and MILDRED MILLIGAN, husband and wife, both of the Town of Lansing, Tompkins County, New York, as Tenants by the Entirety,**

*parties of the second part,*

*Witnesseth that the parties of the first part, in consideration of*

----- **ONE** ----- **Dollar (\$ 1.00 )**  
*lawful money of the United States, in hand paid by the parties of the second part, do hereby grant and release unto the parties of the second part, his or her survivor, their <sup>distaffs</sup> and assigns forever, all*

**THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, Tompkins County, New York and being a part of Military Lot #95 in said Town, more particularly bounded and described as follows:**

**BEGINNING** at a point in the center line of the North Triphammer Road or Kline Road at the northwest corner of premises conveyed to the Parties of the First Part by deed of the Estate of John P. Knettels, dated June 12, 1944 and recorded in the Tompkins County Clerk's office in Liber 272 of Deeds at page 238; running thence easterly along the south line of lands of Hailstork (formerly Deutsch)(said line being approximately 9.4 chains south of the north line of Military Lot #95), a distance of 225 feet to a point; running thence southerly parallel with the center line of North Triphammer Road and 225 feet easterly therefrom; a distance of 186 feet to a point; running thence westerly and parallel with the Deutsch-Hailstork line, a distance of 225 feet to a point in the center line of the North Triphammer Road; running thence northerly along the center line of the North Triphammer Road, a distance of 186 feet to the place of beginning.

**SUBJECT TO** the rights of the New York State Electric and Gas Corporation for a pole line along the east side of Triphammer Road, granted by Fred McGraw, et al October 5, 1935 and recorded in the Tompkins County Clerk's office in Liber 239 of Deeds at page 106.

The conveyed premises comprises a parcel of approximately 0.96 acres in the northwest corner of lands conveyed to the Parties of the First Part by deed of Knettels aforesaid.

Together with the appurtenances and all the estate and rights of the part ies of the first part in and to said premises,

To have and to hold the premises herein granted unto the part ies of the second part, his or her survivor, their distributees and assigns forever.

And said Parties of the First Part

covenant as follows:

First, That the part ies of the second part shall quietly enjoy the said premises;

Second, That said Parties of the First Part

will forever Warrant the title to said premises.

Third, That, in Compliance with Sec. 13 of the Lien Law, the grantors will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Witness Whereof, the part ies of the first part ha ve hereunto set their hands and seals the day and year first above written.

In Presence of

Lester J. Milligan Sr.
Viola Milligan

State of New York County of Tompkins On this 21st day of APRIL, 1958. Nineteen Hundred and Fift-eight before me, the subscriber, personally appeared.

LESTER J. MILLIGAN SR. and VIOLA MILLIGAN

to me personally known and known to me to be the same person s described in and who executed the within instrument, and they severally acknowledged to me that they executed the same.

Betty Humphrey Notary Public

BETTY HUMPHREY NOTARY PUBLIC, State of New York No. 55-189525 Qualified in Tompkins County My Commission Expires March 28, 1967

A true copy of the original recorded on the 9 day of May, 1958 at 1:35 o'clock P.M., and examined.

H. L. Morris Clerk



4 Easement  
Rec 07/30/68  
L 476 P 861

**02211  
Easement  
(Gas Pipe-Line)**

The Undersigned, hereinafter called the Grantor(s), being the owner of or having an interest in land situate in the Town of Lansing County of Tompkins State of New York, fronting on the street or highway known as North Triphammer Road and bounded southerly by the land of Arthur Milligan Sr. and northerly by the land of Arthur Milligan Jr.

In Consideration, of \$1.00 paid by the Grantee, hereby grants and releases unto the New York State Electric & Gas Corporation, a corporation organized under the laws of the State of New York, having an office at Town of Dryden, (no street address), County of Tompkins, State of New York, herein called the Grantee, its successors and assigns, the right, privilege, and authority to construct, reconstruct, extend, operate, inspect, maintain, and at its pleasure, remove a gas pipeline with the necessary fixtures and appurtenances used or adopted for the transmission and/or distribution of gas for public or private use, upon and through said land and property and/or the highways abutting or running through said land as follows:

Said gas pipeline to extend from the southerly to the northerly property line of Grantor's land parallel to the center of North Triphammer road and about 5.5 feet easterly therefrom. Together with service extensions.

Reserving, however, to the Grantor(s) the use and enjoyment of the said premises, except for the erection of buildings or other structures over said pipe line facilities, provided that such use shall not interfere with or obstruct the rights herein granted or create a potential hazard. All pipe lines shall be laid sufficiently deep so that they will not interfere with normal cultivation of the land.

Together with the right to trim, cut, and remove trees and brush to a width of 5 feet along either or both sides of said gas pipe-line.

Provided, however, that any damage (other than for trimming, cutting, or removing trees, as above provided) to the property of the Grantor(s), caused by the Grantee in constructing or repairing said line, shall be borne by the Grantee.

In Witness Whereof, the Grantor(s) have hereunto set their hand(s) and seal(s) this 7th day of May, 1968.

In Presence of:

- Arthur J. Milligan Sr. (L.S.)  
Address: 665 North Triphammer Road  
Shady, New York (N.Y.)
- Viola Milligan (L.S.)  
Address: 665 North Triphammer Road (N.Y.)  
Shady, New York
- ..... (L.S.)  
Address: .....
- ..... (L.S.)  
Address: .....
- ..... (L.S.)  
Address: .....

LIBER 476 PAGE 861

NW-4 4-66

REC 476 P 861

LIBER 476 PAGE 862  
YORK STATE ELECTRIC & GAS CORP. ITHACA DOCUMENT FILE

(Personal Acknowledgment)

State of New York  
County of Tompkins } ss:

On this 7<sup>th</sup> day of MAY  
1968, before me, the subscriber, personally appeared  
Lester J. Milligan Sr.  
AND  
Viola Milligan

to me personally known and known to me to be the same  
person(s) described in and who executed the within instru-  
ment and duly acknowledged to me the execution of the  
same.

*John D. Murray*  
(Notary Public)

JOHN D. MURRAY  
Notary Public, State of New York  
Qualified in Tompkins County  
Term Expires March 24, 1970

REMARKS  
R

Paid from Working Fund ..... Office  
Ck. No. .... Amt. .... Date  
Ck. No. .... Amt. .... Date

RETURN TO  
CORPORATE DOCUMENT DEPARTMENT  
NEW YORK STATE ELECTRIC & GAS CORP.  
POST OFFICE BOX 287  
ITHACA, NEW YORK

A true copy of the original recorded on the 30<sup>th</sup> day of  
July 1968 at 12:00 o'clock M., and examined.

*Sally Robinson*  
Clerk



5 Easement  
Rec 06/08/76  
L 551 P 852

LIBER 551 PAGE 852

2102

CONSIDERATION LESS THAN \$100.00

RECEIVED of the NEW YORK TELEPHONE COMPANY whose principal office is at 140 West Street, City, County and State of New York, hereinafter referred to as the Grantee, One Dollar (\$1.00) in consideration of which

Viola Milligan of 665 North Triphammer Rd. Ithaca N.Y.  
of Town of Lansing  
of \_\_\_\_\_

hereinafter called the Grantor, (s) hereby grant (s) and convey (s) with general Warranty unto the Grantee its successors, assigns, lessees and agents, a perpetual right of way and easement to construct, maintain, repair, replace and operate its communication lines, consisting of such poles, cables, conduits, manholes, fixtures, marker poles and appurtenances, as the business of the Grantee, its successors, assigns, and lessees, may from time to time require under, through, over and across the property which the Grantor (s) own (s) or in which the Grantor (s) may have an interest, being a part of \_\_\_\_\_ Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_ of the Town of Lansing, County of Tompkins and

State of New York, and also upon, over and/or under the highways upon or adjoining said property, with the right at all times to cross and recross over said property with vehicles and equipment for the purpose of exercising the rights herein granted and reaching points on Grantee's right of way on neighboring lands, and with the right to remove from time to time all trees, limbs of trees, brush and structures along said lines which may interfere with or endanger the construction or maintenance of the same, and the Grantor (s) for herself her heirs, assigns, successors and legal representatives, hereby covenant (s) that no building or other structure will be erected or permitted within 10 feet of said lines.

RETURN TO  
RIGHT OF WAY & CLAIMS AGENT  
NEW YORK TELEPHONE CO.  
64 HENRY STREET  
BINGHAMTON, NEW YORK

The Grantee, its successors, assigns and/or lessees shall compensate the Grantor (s) for all damage to crops and shall repair any damage done to the driveways, fences and fields in the exercise of the rights herein granted:

IN WITNESS WHEREOF, this instrument has been duly executed by the Grantor (s) under seal this 5 day of June, 1976

Witnesses:

Viola Milligan L.S.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
L.S.  
L.S.  
L.S.

STATE OF NEW YORK }  
COUNTY OF Tompkins } ss:

On the 5 day of June, 1976, before me personally appeared Viola Milligan to me known, and known to me to be the same person described in and who executed the within instrument, and

she acknowledged to me that she executed the same.

Charles R. Hutchinson  
Notary Public

CHARLES R. HUTCHINSON  
Notary Public in the State of New York  
Appointed in Broome Co., No. 04-70, 1975  
My Commission Expires March 31, 1978

TOMPKINS COUNTY  
019625  
REAL ESTATE TRANSFER TAX STATE OF NEW YORK  
Dept. of Taxation JUN-8-76  
& Finance PB 10640  
\$00.00  
RJD

2500

Tompkins County, ss:  
Recorded on the 24 Day of June, 1976 at 8.15 o'clock P. M., in Liber 551 of 1976  
at Page 852 and examined.  
Lucille A. ... Clerk



# This Indenture,

JULY

Made the 13<sup>TH</sup> day of  
Nineteen Hundred and Seventy-seven

day of

Between

VIOLA MILLIGAN  
665 North Triphammer Road  
Ithaca, New York,

party of the first part, and

ARTHUR F. MILLIGAN and CATHERINE M. MILLIGAN  
661 North Triphammer Road  
Ithaca, New York

Witnesseth that the party of the first part, in consideration of \* \* \* \* \*  
\* \* \* \* \* One and No/100ths \* \* \* \* \* Dollar (\$1.00\*\*\*\*\*)  
lawful money of the United States, and other good and valuable consideration  
paid by the parties of the second part, do es hereby grant and release unto the  
part ies of the second part, their heirs, executors and assigns forever, all  
THAT PIECE OR PARCEL OF LAND situate in the Town of Lansing, County  
of Tompkins and State of New York, being a part of Lot #95 in said  
town and more particularly bounded and described as follows:  
COMMENCING at a point in the center line of North Triphammer Road  
in said town, said point being the northwest corner of premises of  
Arthur F. Milligan and Katherine M. Milligan by deed of Lester J.  
Milligan and Viola Milligan dated May 27, 1950 and recorded in the  
Tompkins County Clerk's Office in Liber 331 at Page 504; thence  
running easterly along the northerly line of premises of said Arthur  
F. Milligan and Katherine M. Milligan to the northeast corner thereof;  
thence running southerly along the easterly line of said Arthur F.  
Milligan and Katherine M. Milligan premises 234 feet to a point  
marking the southeast corner of said premises; thence easterly on a  
course which is the extension of the southerly boundary of the said  
Arthur F. Milligan and Katherine M. Milligan premises 215 feet to a  
point; thence northerly 246 feet to a point; thence westerly and on a  
course parallel with the northerly boundary of said Arthur F. Milligan  
and Katherine M. Milligan premises 440 feet to the center line of the  
said North Triphammer Road; thence southerly along the center line of  
North Triphammer Road 12 feet to the point or place of beginning.

BEING the same premises conveyed to Grantor herein and Lester J.  
Milligan by deed of Delta Knottles, Ind and as Executrix of the  
Last Will and Testament of John P. Knottles, deceased, dated June 12  
1944 and recorded in the Tompkins County Clerk's Office September 12,  
1944 in Liber 272 of Deeds at Page 238. The said Lester J. Milligan  
having died the 6th day of July, 1971 leaving Grantor sole surviving  
tenant by the entirety.

SUBJECT TO the rights of the public in and to that portion of said  
premises lying within the bounds of North Triphammer Road.

FURTHER SUBJECT TO any easements or rights of way of record.



LIBER 559 PAGE 282

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,  
To have and to hold the premises herein granted unto the parties of the second part, their heirs, executors, administrators and assigns forever.

And said party of the first part covenants as follows:  
First. That the parties of the second part shall quietly enjoy the said premises;

Second. That said party of the first part will forever warrant the title to said premises.

Third. That, in Compliance with Sec. 13 of the Lien Law, the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Witness Whereof, the party of the first part has hereunto set her hand and seal the day and year first above written.

In Presence of

Mailing Address:  
661 N. Triphammer Rd.  
Ithaca, New York

Being a part of  
Town of Lansing  
Tax Parcel No. 7-44-1-3

RECEIVED
\$ -0-
REAL ESTATE
AUG 8 1977
TRANSFER TAX
TOMPKINS
COUNTY

*Viola Milligan*  
Viola Milligan

State of New York }  
County of TOMPKINS } ss. On this 13<sup>th</sup> day of JULY  
before me, the subscriber, personally appeared  
Nineteen Hundred and Seventy-seven

VIOLA MILLIGAN

to me personally known and known to me to be the same person described in and who executed the within Instrument, and she duly acknowledged to me that she executed the same.

*Wesley E. McDevott*

Notary Public  
WESLEY E. McDEVOTT  
Notary Public, State of New York  
No. 781135  
Qualified in Tompkins County  
Commission Expires March 30, 1978

Tompkins County, ss:  
Recorded on the 8<sup>th</sup> Day of August 1977 at  
10:34 o'clock A.M., in Liber 559 of Deeds  
at Page 287 and examined.

*Lucille Brimble* Clerk

7 POA  
Rec 11/29/88  
L 642 P 182  
Tax Lot 44.-1-3.3

LIBER 642 PAGE 182

10025

Form 578 Statutory Short Form of General Power of Attorney Rev. 9/86



TUTBLANK REGISTERED U. S. PAT. OFFICE  
TUTTLE LAW PRINT, PUBLISHERS, RUTLAND, VT 05701

Notice: the powers granted by this document are broad and sweeping. They are defined in New York General Obligation Law, Article 5, Title 15, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned.

**Know All Men by These Presents**, which are intended to constitute a **GENERAL POWER OF ATTORNEY** pursuant to Article 5, Title 15 of the New York General Obligations Law:

That I Viola Milligan, residing at 2665 N. Triphammer Rd. Ithaca,  
*(insert name and address of the principal)*  
New York 14850  
do hereby appoint Arthur F. Milligan, Sr. residing at 2661 N. Triphammer  
*(insert name and address of the agent, or each agent if more than one is designated)*  
Road, Ithaca, New York 14850

**my attorney(s)-in-fact TO ACT**

*(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in the blank the word "severally". Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.*

**First: In my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:**

*(Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (L) inclusive, shall automatically constitute an elimination also of subdivision (M).*

To strike out any subdivisions the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

- (A) real estate transactions; [ ]
- (B) chattel and goods transactions; [ ]
- (C) bond, share and commodity transactions; [ ]
- (D) banking transactions; [ ]
- (E) business operating transactions; [ ]
- (F) insurance transactions; [ ]
- (G) estate transactions; [ ]
- (H) claims and litigation; [ ]
- (I) personal relationships and affairs; [ ]
- (J) benefits from military service; [ ]
- (K) records, reports and statements; [ ]
- (L) full and unqualified authority to my attorney(s)-in-fact to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select: [ ]
- (M) all other matters; [ ]

(Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.)



LIBER 642 PAGE 183

Second: This Power of Attorney shall not be affected by the subsequent disability or incompetence of the principal.

Third: To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation or termination shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

In Witness Whereof, I have hereunto signed my name and affixed my seal this 17 day of April MAY, 1988

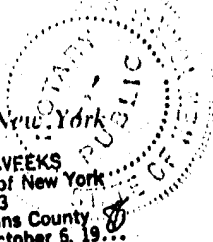
Viola Milligan (Signature of Principal) L.S. VIOLA MILLIGAN

State of New York SS. County of Tompkins

On this 17th day of April MAY Nineteen Hundred Eighty Eight before me, the subscriber, personally appeared VIOLA MILLIGAN

to me personally known, and known to me to be the same person described in and who executed the foregoing Power of Attorney, and she acknowledged to me that she executed the same

Christine M. Weeks Notary Public for the State of New York



Tompkins County, ss: Recorded on this 29th day of Nov. 1988 at 4:08 P.M., in Liber 642 of 282 at page 182 and examined.

Rachel A. Pierce Clerk

Power of Attorney STATUTORY SHORT FORM

VIOLA MILLIGAN

TO

ARTHUR F. MILLIGAN SR.

Dated, April 1988

Rec. 11.50 Ret. Jeff Coleman

NOV 23 4 52 PM '88

RECEIVED TOMPKINS COUNTY CLERK

8 Deed  
Rec 11/29/88  
L 642 P 186  
Tax Lot 44.-1-3.3

RECEIVED  
\$ 812.00  
REAL ESTATE  
1161 NOV 29 1988  
TRANSFER TAX  
TOMPKINS  
COUNTY

LIBER 642 PAGE 186

10023

WARRANTY DEED

THIS INDENTURE MADE THE 23rd DAY OF November , 1988

BETWEEN VIOLA MILLIGAN, residing at 2665 N. Triphammer Road, Ithaca, New York 14850 party of the first part, and LIANG CHUN PO and CHING PO MAXIM, residing at 201 Elmwood Avenue, Ithaca, New York 14850 as joint tenants, parties of the second part,

WITNESSETH, that the party of the first part, in consideration of ONE AND NO/100 (\$1.00) DOLLAR, lawful money of the United States, and other good and valuable consideration paid by the parties of the second part, do hereby grant and release unto the parties of the second part, their heirs distributees and assigns forever,

ALL THAT PIECE OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York and being a part of Military Lot #95 in said Town more particularly bounded and described as follows: Commencing at a point in the centerline of N. Triphammer Road said point being located Northerly a distance of 2,306 feet along said centerline from it's intersection with the centerline of Cherry Road in said town; thence running south 81° 36' East and passing through a 5/8 inch rebar with survey cap at 25 feet and running a total distance of 440 feet to a point marked by a 5/8 inch rebar with survey cap; thence running South 08° 54' West a distance of 246 feet to a point marked by a 5/8 inch rebar with survey cap; thence running South 81° 36' East 3,227.21 feet to a point marked by a 5/8 inch rebar with survey cap; thence running North 08° 20' East a distance of 432.54 feet to a point marked by an existing iron pipe; thence running North 07° 42' East a distance of 130.26 feet to a point marked by an existing iron pipe; thence running North 81° 27' West a distance of 2,973.66 feet to a point marked by a 5/8 inch rebar with a survey cap; thence running South 11° 06' West a distance of 16.5 feet to a point marked by a 5/8 inch rebar with a survey cap; thence running North 82° 35' West a distance of 461.06 feet to a point marked by a 5/8 inch rebar with survey cap; thence running South 08° 54' West a distance of 186 feet to a point marked by a 5/8 inch rebar with survey cap; thence running North 82° 35' West and passing through a 5/8 inch rebar with survey cap at 200 feet and running a total distance of 225 feet to a point in the centerline of N. Triphammer Road; thence South 08° 54' West a distance of 110.34 feet along the centerline of N. Triphammer Road to a point and the place of beginning containing 43.933 acres of land more or less.

SUBJECT TO the following:  
1. The rights of the public in and to that portion of the above described premises lying within the bounds of the public

See Agreement, recorded in Deeds Bk. 664, p. 675

See Deeds, Liber 642 page 182.

WESLEY E. McDERMOTT  
ATTORNEY AT LAW  
405 N. TIOGA ST.  
ITHACA, N. Y. 14850  
(607) 273-8410



highway.

2. A right of way given by Viola Milligan to the New York Telephone Company, dated June 5, 1976 and recorded June 8, 1976 in the Tompkins County Clerk's Office in Liber 551 of Deeds at page 852.

3. An easement given by Lester J. Milligan Sr. and Viola Milligan, to the New York State Electric and Gas Corporation dated May 7, 1968 and recorded in the Tompkins County Clerk's Office on July 30, 1968 in Liber 476 of Deeds at page 861.

4. A right of way given by Nina McGraw and Fred McGraw and Delta H. Knettles and Charles H. Blood to New York State Electric and Gas Corporation dated October 5, 1935 and recorded in the Tompkins County Clerk's Office on March 4, 1936 in Liber 239 of Deeds at page 106.

5. A right of way given by J. P. Knettles to Ovid Electric Company dated August 20, 1919 and recorded May 6, 1919 in the Tompkins County Clerk's Office in Liber 5 of miscellaneous records at page 83.

FURTHER SUBJECT TO life use of the residence house and two acres of land contiguous to said dwelling house by Viola Milligan only, provided however that the said use shall be as a residence only and not as rental property or for any other use. The said Viola Milligan shall pay all utilities, insurance, water and maintenance cost, keeping said premises in as good condition as on the date hereof.

BEING a part of the same premises conveyed to grantor herein and Lester J. Milligan by Deed of Delta Knettles individually and as executrix of the Last Will And Testament of John P. Knettles dated June 12, 1944 and recorded in the Tompkins County Clerk's Office on September 12, 1944 in Liber 272 of Deeds at page 238. The said Lester J. Milligan Sr. having died on July 6, 1971 leaving grantor herein as the sole surviving tenant by the entirety.

map

ALSO being the parcel shown and designated as parcel 2 on a certain survey map entitled Arthur Milligan Sr. and Viola Milligan N. Triphammer Road (Mil #95) Town of Lansing Tompkins County New York dated October 20, 1988 and drawn by Gary Bruce Davison a copy of said map being filed concurrently herewith.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the part of the second part, their heirs, distributees and assigns forever.

AND SAID party of the first part covenant as follows:

FIRST, that the parties of the second part shall quietly

WESLEY E. McDERMOTT  
ATTORNEY AT LAW  
405 N. TIOGA ST.  
ITHACA, N. Y. 14850  
(607) 273-8410

LIBER 642 PAGE 188

enjoy the said premises;

SECOND, that said party of the first part, will forever WARRANT the title to said premises.

THIRD, That, in Compliance with Sec. 13 of the Lien Law, the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has hereunto set her hand and seal the day and year first above written.

IN PRESENCE OF

*Arthur F. Milligan* Pro. Ver. L.S.  
VIOLA MILLIGAN *milligan*

STATE OF NEW YORK )  
COUNTY OF TOMPKINS) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, Nineteen Hundred and EIGHTY EIGHT before me, the subscriber, personally appeared VIOLA MILLIGAN, to me personally known and known to me to be the same person described in and who executed the within Instrument, she acknowledged to me that she executed the same.

NOTARY PUBLIC

STATE OF NEW YORK )  
COUNTY OF TOMPKINS ) SS:

ON this 23rd day of November 23rd, 1988, before me, the subscriber, personally appeared, ARTHUR F. MILLIGAN SR., to me personally known to be the person described and appointed attorney-in-fact in and by a certain power of attorney executed by VIOLA MILLIGAN dated MAY 17, 1988, and recorded in the Tompkins County Clerk's Office concurrently herewith, and he acknowledged to me that he executed foregoing instrument as the act of the said VIOLA MILLIGAN and that said power of attorney is presently in full force and effect.

*Wesley E. McDermott*  
NOTARY PUBLIC

WESLEY E. McDERMOTT  
Notary Public, State of New York  
No. 55-7816135  
Qualified in Tompkins County  
Term Expires OCT 31, 1990

return: Jeff Coleman  
Rec 14.00  
Stamp 812

Tompkins County, ss: \_\_\_\_\_  
Recorded on the \_\_\_\_\_ Day of \_\_\_\_\_, 1988.  
A.S.S. Clerk, P.M., in Liber 642 of S.S.P.S.  
at page 186 and examined.  
*Wesley E. McDermott* Clerk

WESLEY E. McDERMOTT  
ATTORNEY AT LAW  
405 N TIOGA ST.  
ITHACA, N.Y. 14850  
(607) 273-8410



9 Agreement to relinquish Life Estate  
Rec 09/12/91  
L 664 P 675

RECEIVED  
REAL ESTATE  
SEP 12 1991  
TRANSFER TAX  
TOMPKINS  
COUNTY

LIBER 664 PAGE 675

6913

AGREEMENT

THIS Agreement made this 10<sup>th</sup> day of September, 1991

by and between

VIOLA MILLIGAN and ARTHUR MILLIGAN, residing at 2665 N. Triphammer Road, Ithaca, New York party, of the first part and

LIANG CHUNG PO and CHING PO MAXIM, residing at 201 Elmwood Avenue, Ithaca, New York, parties of the second part.

WITNESSETH

WHEREAS, the party of the first part conveyed certain premises to the parties of the second part situate on N. Triphammer Road, in the Town of Lansing, County of Tompkins and State of New York by Deed dated the 23rd day of November, 1988 and recorded on the 29th day of November, 1988 in Liber 642 of Deeds at Page 186, and

WHEREAS, the aforesaid Deed reserved a life use by the party of the first part of the residence house and two (2) acres of land that contiguous to said dwelling house, and

WHEREAS, the aforesaid Deed required the party of the first part to continue to pay all utilities, insurance, water and maintenance on said dwelling house, and to maintain the premises subject to the life use in as good condition as of the date of purchase, and

WHEREAS, the parties wish to terminate the party of the first part's life use and the parties of the second part are willing to assume the responsibilities for payment of utilities, insurance, water and maintenance of the said dwelling house, now

WESLEY E. McDERMOTT  
ATTORNEY AT LAW  
405 N. TIOGA ST.  
ITHACA, N. Y. 14850  
607 273-8410

LIBER 684 PAGE 676

THEREFORE, the parties covenant and agree as follows:

1. The party of the first part, Viola Milligan hereby remises, releases and quit claims unto the parties of the second part, Liang Chung Po and Ching Po Maxim all of her right, title and interest as preserved as a life estate in a certain Deed from the party of the first part to the parties of the second part, which said Deed was dated the 23rd day of November, 1988 and recorded on the 29th day of November, 1988 in the Tompkins County Clerk's Office in Liber 624 of Deeds at Page 186, the said life estate being for the use of the dwelling house and two (2) acres of land contiguous to the dwelling house, all as shown on Parcel 2 of a certain survey map entitled "Lands of: Arthur Milligan Sr. and Viola Milligan located: N. Triphammer Road (Military Lot 95) in the Town of Lansing, County of Tompkins, State of New York" drawn by Gary Bruce Davidson and dated the 20th day of October, 1988 which said survey map was filed concurrently in the Tompkins County Clerk's Office with the above Deed.

2. The parties of the second part, Liang Chung Po and Ching Po Maxim agree that in consideration for the surrender of the life estate reserved unto the party of the first part during her lifetime, that from the date of this instrument and henceforth they shall assume all costs in relation to the premises hereby released, to include but not be limited to the costs for all utilities, insurance, water and the maintenance of the house. The parties of the second part further accept the said premises in "as is" condition.

WESLEY E. McDERMOTT  
 ATTORNEY AT LAW  
 408 N. TIOGA ST.  
 ITHACA, N. Y. 14850  
 607) 273-6410





LIBER 664 PAGE 678

STATE OF NEW YORK)  
COUNTY OF TOMPKINS) SS:

On this 10th day of September, 1991, before me, the subscriber personally appeared CHING PO MAXIM, to me known and known personally to me to be the same person described in and who executed the foregoing Instrument and she duly acknowledged to me that she executed the same.

*Theresa M. Rimbey*  
NOTARY PUBLIC

THERESA M. RIMBEY  
Notary Public, State of New York  
No. 4800455  
Qualified in Tioga County  
My Commission Expires Feb. 28, 1992

STATE OF NEW YORK) COUNTY OF TOMPKINS) ss.

On this 11th day of September, 1991, before me came ARTHUR MILLIGAN, to me known, and known to me be the individual who executed the foregoing instrument, and known to me to be the individual described in and appointed attorney-in-fact by a certain Power of Attorney executed by VIOLA MILLIGAN, bearing date the 17th day of May, 1988, and was recorded in the Office of the Clerk of the County of Tompkins on November 29, 1988 in Liber 642 of Deeds at page 182, and ARTHUR MILLIGAN acknowledged that he executed the foregoing instrument as the act of said VIOLA MILLIGAN and as her attorney-in-fact, and the said ARTHUR MILLIGAN acknowledged to me that the said Power of Attorney has not been revoked by the death of the said VIOLA MILLIGAN or otherwise, and is in full force and effect.

*Theresa M. Rimbey*  
Notary Public

THERESA M. RIMBEY  
Notary Public, State of New York  
No. 4800455  
Qualified in Tioga County  
My Commission Expires Feb. 28, 1992

WESLEY E. McDERMOTT  
ATTORNEY AT LAW  
405 N. TOGA ST.  
ITHACA, N. Y. 14850  
807-273-8410

Tompkins County, ss:  
Recorded on the 12th day of September 1991 at 3:41 o'clock P.M., in Liber 664 of Deeds at Page 675 and examined by Aurora R. Valentich Clerk



10 Deed  
Rec 01/19/99  
L 839 P 1

Section 3, Item d.

FILED 839 PAGE 1

**WARRANTY DEED  
with Lien Covenant**

**THIS INDENTURE** made as of this 1st day of January, Nineteen Hundred and Ninety-Nine,

**BETWEEN** CHING PO and LIANG CHUN PO individually and as joint tenants, both of 201 Elmwood Avenue, Ithaca, NY 14850,  
parties of the first part, and

PO FAMILY LIMITED PARTNERSHIP, a limited partnership formed under the laws of the State of New York with principal offices at 201 Elmwood Avenue, Ithaca, NY 14850,

parties of the second part.

**WITNESSETH.** That the parties of the first part, in consideration of ONE AND NO/100 Dollars (\$1.00) lawful money of the United States, and other good and valuable consideration paid by the parties of the second part, do hereby grant and release unto the parties of the second part, its heirs, distributees and assigns forever,

The transfer herein is not in the nature of a sale; a change in the form of ownership of the real estate is the sole purpose for this conveyance.

**SEE ATTACHED PARCELS (1-5) FOR LEGAL DESCRIPTIONS.**

**TOGETHER** with the appurtenances and all the estate and rights of the parties of the first part in and to said premises,

**TO HAVE AND TO HOLD** the premises herein granted unto the parties of the second part, its heirs, distributees and assigns forever

**AND** the parties of the first part covenants as follows:

**FIRST,** That the parties of the second part shall quietly enjoy the said premises;

**SECOND,** That said parties of the first part will forever **WARRANT** the title to said premises

**THIRD,** That, in Compliance with Sec. 13 of the Lien Law, the grantors will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

**IN WITNESS WHEREOF,** the parties of the first part have hereunto set their hands and

RECEIVED  
\$ 0  
JAN 19 1999  
SALVATORE  
TRANSFER TAX  
TOMPKINS COUNTY

See Misc. Bk. 72 Pg. 28

See Deed R/Rec Inst. # 435556-001

**PARCEL 1**  
**403 College Avenue, City of Ithaca, TP#64-2-29**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Ithaca, County of Tompkins and State of New York and more particularly bounded and described as follows:

BEGINNING at a point in the east line of College Avenue, which point is 60 feet north of the north street line of Dryden Road, being the southwest corner of premises now or formerly of #407 College Avenue Assoc. described by deed recorded in the Tompkins County Clerk's Office in Liber 632 of Deeds at page 889;

thence south 89 degrees 42" East along the north face of the building on the premises herein described 70 feet;

thence south along the east face of the building on the within premises 36.75 feet to a point in the center of an underground telephone box;

thence north 89 degrees 42" West in part along the adjoining walls of the building on the within premises and the building on the south for 26.4 feet;

thence north along the adjoining walls of the two said buildings 1.75 feet;

thence north 89 degrees 42" West along the adjoining walls of the two buildings 43.6 feet to the east street line of College Avenue;

thence continuing along the same course an additional 30 feet to a point in the approximate centerline of College Avenue;

thence north along said centerline of College Avenue 35 feet (parallel to the west wall of the building on the within premises) to a point in said centerline;

thence south 89 degrees 42" East 30 feet to the point and place of beginning.

SUBJECT TO the rights of the public in and to that portion of the premises lying within the bounds of College Avenue.

SUBJECT TO a restriction against retail bookstore operations on the premises as follows: "the said premises shall not be used in part or in whole for the operation of a place of business where books are the main item offered for sale so long as Nebraska Book Co., Inc., its successors owns or operates a retail book store in the Collegetown area of the City of Ithaca, New York, or until January 31, 2010, whichever event occurs first".

TOGETHER WITH the right to use a lane running from the southeast corner of the above described premises southerly to Dryden Road, all as set forth in an agreement dated April 17, 1990 between Robert G. and Mable F. Johnson and the Ithaca Station, Inc. and SUBJECT TO all the obligations, limitations and restrictions set forth therein. The said agreement is recorded in the Tompkins County Clerk's Office in Liber 653 of Deeds at page 1102.

TOGETHER WITH the right to enter onto the property next north, known as 407 College Avenue, as an emergency route for ingress and egress and for access to the building on the above-described premises for fire fighting and other emergency purposes, all as set forth in an agreement dated November 6, 1990 between Ching Po and Liang Chun Po and 407 College Avenue Associates and SUBJECT TO all the conditions, obligations, limitations and restrictions set forth therein. The said agreement was recorded on November 13, 1990 in said Clerk's Office in Liber 658 of Deeds at page 692.

TOGETHER WITH the right to maintain an encroachment of the building on the above-described premises onto the College Avenue right of way, as set forth in an agreement dated December 14, 1990 between Liang Chun Po and Ching Po and the City of Ithaca and SUBJECT TO all conditions, obligations, limitations and restrictions set forth therein. The said agreement was recorded on December 28, 1990 in said Clerk's Office in Liber 659 of Deeds at page 488.

Being the same premises conveyed to Ching Po and Liang Chun Po by two Warranty Deeds one dated June 4, 1990 and recorded June 4, 1990 in said Clerk's Office in Liber 654 of Deeds at page 1032 and the other one dated December 21, 1990 and recorded December 28, 1990 in said Clerk's Office in Liber 659 of Deeds at page 493.



**PARCEL 1.**  
**403 College Avenue, City of Ithaca, TP#64.-2-29**

Being the same premises shown on a survey map entitled "SURVEY MAP NO 403 COLLEGE AVENUE, CITY OF ITHACA, TOMP CO., N.Y." by T.G Miller, P.C., Engineers & surveyors, dated March 14, 1990 a copy of which was recorded in said Clerk's Office in Liber 654 of Deeds at page 1034

The parcel described above is conveyed subject to the following mortgage.

A mortgage by Ching Po and Liang Chun Po to Robert G. Johnson and Mable F. Johnson dated June 4, 1990 and recorded June 4, 1990 in said Clerk's Office in Liber 580 of Mortgages at page 738, to secure \$344,000.00 and interest. Said mortgage was modified and spread by Agreement between Liang Chun Po and Ching Po to Robert G. Johnson and Mabel F. Johnson dated December 21, 1990 and recorded December 28, 1990 in said Clerk's Office in Liber 591 of Mortgages at page 985. Said mortgage was assigned by Assignment by Robert G. & Mable F. Johnson to Tompkins County Trust Company by Assignment dated December 5, 1991 and recorded January 2, 1992 in 61 of Assignments and Releases at page 1. Said mortgage was further modified by an Agreement between Liang Chun Po and Ching Po to Tompkins County Trust Company by Consolidation and Extension Mortgage Agreement dated January 2, 1992 and recorded January 2, 1992 in said Clerk's Office in Liber 611 of Mortgages at page 44, to secure an additional indebtedness of \$384,995.36 for a total indebtedness of \$725,000.00 and interest. The principal balance outstanding as of January 1, 1999 is \$645,888.12.

LIBER 839 PAGE 4

**PARCEL 2**  
**206 College Avenue, City of Ithaca, TP#68-5-11**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Ithaca, County of Tompkins and State of New York, bounded and described as follows:

COMMENCING at the northwest corner of premises reputedly of Howard (see Liber 642 of Deeds at page 407), formerly of Myers (462 Deeds, Page 944), at an existing iron pipe set in the west street line of College Avenue, which pipe is situate northerly along said west street line a distance of 99.80 feet from another pipe set in north line of Cook Street; thence North 69 degrees 33' 48" West a distance of 100.13 feet, along Howard's North line; thence North 20 degrees 55' 21" East a distance of 50 feet along the west line of premises reputedly of Ledger Properties, Inc. (537 Deeds, Page 166) and Beach Avramis (659 Deeds Page 825) to a pipe in a retaining wall; thence South 69 degrees 33' 01" East a distance of 100.00 feet along Beach Avramis premises aforementioned, and the south line of premises reputedly of Beverly Hull (453 Deeds, Page 801) to a pipe on the western line of College Avenue; thence South 20 degrees 46' 28" West along the west line of College Avenue a distance of 49 98 feet to the place of beginning.

The dwelling on the above-described premises is known as No. 206 College Avenue, Ithaca, New York.

Together with all right, title and interest of the grantors lying between the last course above-described and the centerline of College Avenue.

Being the same premises conveyed to Ching Po and Liang Chun Po by Warranty Deed dated January 24, 1992 and recorded January 28, 1992 in the Tompkins County Clerk's Office in Liber 668 of Deeds at page 295.

Being the same premises described in a survey entitled "RESURVEY FOR JOHN; MARY CROWLEY" dated November, 1991 by George C. Schlecht. Said map was filed in the Tompkins County Clerk's Office on January 28, 1992 in Drawer S, Page 241.

The above described parcel is conveyed subject to the following mortgages:

1a. A mortgage given by John M. Crowley and Mary R. Crowley to Elmira Savings and Loan, FA dated August 5, 1987 and recorded August 7, 1987 in the Tompkins County Clerk's Office in Liber 523 of Mortgages at page 739, to secure \$105,000.00. Said mortgage was assumed by the grantors herein by Warranty Deed dated January 24, 1992 and recorded January 28, 1992 in said Clerk's Office in Liber 668 of Deeds at page 295.

1b. A mortgage given by Ching Po and Liang Chun Po to Elmira Savings and Loan, F.A. dated January 24, 1992 and recorded January 28, 1992 in said Clerk's Office in Liber 614 of Mortgages at page 344, to secure \$25,987.42 and interest.

The above stated two mortgages were consolidated into a single lien mortgage by an Consolidation Agreement between Elmira Savings & Loan, F.A. and Ching Po and Liang Chun Po by Agreement dated January 24, 1992 and recorded January 28, 1992 in said Clerk's Office in Liber 614 of Mortgages at page 341 to secure a total indebtedness of \$115,000.00 and interest. The principal balance outstanding as of January 1, 1999 is \$82,627.93.

2. A mortgage given by John Crowley and Mary Crowley to Samuel A. Gould by dated August 5, 1987 and recorded August 7, 1987 in said Clerk's Office in Liber 523 of Mortgages at page 746, to secure \$94,446.42 and interest. Said mortgage was assumed by Warranty Deed by the grantors herein dated January 24, 1992 and recorded January 28, 1992 in said Clerk's Office in Liber 668 of Deeds at page 295. Said mortgage was modified by Loan Modification Agreement between Samuel A. Gould and Liang Chun Po and Ching Po dated January 21, 1992 and recorded January 28, 1992 in said Clerk's Office in Liber 614 of Mortgages at page 340, and subsequently assigned to Shelley L. Gould by Assignment dated and recorded October 7, 1998 in said Clerk's Office in Liber 87 of Assignment and Releases at page 341. The principal balance outstanding as of January 1, 1999 is \$2,443.27.



**PARCEL 3** LIBER 839 PAGE 5  
**202 College Avenue, City of Ithaca, TP#68.-5-13**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Ithaca, County of Tompkins and State of New York, more particularly described as follows:

BEGINNING at the intersection of the west line of College Avenue and the north line of Cook Street, marked by a set pipe,

running thence south 89 degrees 50' west along the north line of Cook Street for a total distance of 100.0 feet to a point marked by a pipe, being the southeast corner of premises owned by Ledger Properties, Inc. (537.166),

running thence north along the east line of Ledger Properties, Inc. (R.O.) for a total distance of 50.0 feet to a point marked by a set pipe, and lying 1.1 feet, more or less, east of a stone wall,

running thence north 89 degrees 50 minutes east along the south line of premises reputedly owned by Howard (642.407) for a total distance of 100.0 feet to a point marked by an existing pipe in the west line of College Avenue,

running thence south 50.0 feet along the west line of College Avenue to the point or place of beginning

The above-described premises are more particularly shown on a survey map entitled "SURVEY MAP NO. 202 COLLEGE AVENUE, CITY OF ITHACA, TOMP. CO., N.Y." dated September 28, 1981 and amended January 3, 1992 by T. G. Miller P.C. Engineers and Surveyors a copy of which was recorded in the Tompkins County Clerk's Office on March 27, 1992 in Liber 672 of Deeds at page 28.

Being the same premises conveyed to Ching Po and Liang Chun Po by Warranty Deed dated March 26, 1992 and recorded March 27, 1992 in said Clerk's Office in Liber 672 of Deeds at page 27.

**The parcel described above is conveyed subject to the following mortgage:**

A mortgage given by Ching Po and Liang Chun Po to Tompkins County Trust Company dated March 26, 1992 and recorded March 27, 1992 in said Clerk's Office in Liber 631 of Mortgages at page 335, to secure \$275,000.00 and interest. Said mortgage was merged and consolidated by Agreement dated April 26, 1994 and recorded April 27, 1994 in said clerk's office in Liber 871 of Mortgages at page 185 to secure an additional indebtedness of \$107,601.63 for a total indebtedness of \$375,000.00 and interest. The principal balance outstanding as of January 1, 1999 is \$335,505.72.

**PARCEL 4**  
**2665 N. Triphammer Road, Town of Lansing, TP#44-1-3.2**

**Parcel A** ←

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York and being a part of Military Lot #95 in said Town more particularly bounded and described as follows: Commencing at a point in the centerline of N. Triphammer Road said point being located Northerly a distance of 2,306 feet along said centerline from it's intersection with the centerline of Cherry Road in said town; thence running south 81 degrees 36' East and passing through a 5/8" rebar with survey cap at 25 feet and running a total distance of 440 feet to a point marked by a 5/8" rebar with survey cap; thence running South 08 degrees 54' West a distance of 246 feet to a point marked by a 5/8" rebar with survey cap; thence running South 81 degrees 36' East 3,227.21 feet to a point marked by a 5/8" rebar with survey cap; thence running North 08 degrees 20' East a distance 432.54 feet to a point marked by an existing iron pipe; thence running North 07 degrees 42' East a distance of 130.26 feet to a point marked by an existing iron pipe, thence running North 81 degrees 27' West a distance of 2,973.66 feet to a point marked by a 5/8" rebar with a survey cap, thence running South 11 degrees 06' West a distance of 16.5 feet to a point marked by a 5/8" rebar with a survey cap; thence running North 82 degrees 35' West a distance of 461.06 feet to a point marked by a 5/8" rebar with survey cap; thence running South 08 degrees 54' West a distance of 186 feet to a point marked by a 5/8" rebar with survey cap, thence running North 82 degrees 35' West and passing through a 5/8" rebar with survey cap at 200 feet and running a total distance of 225 feet to a point in the centerline of N. Triphammer Road; thence South 08 degrees 54' West a distance of 110.34 feet along the centerline of N. Triphammer Road to a point and the place of beginning containing 43.933 acres of land more or less.

SUBJECT TO the following:

1. The rights of the public in and to that portion of the above described premises lying within the bounds of the public highway.
2. A right of way given by Viola Milligan to New York Telephone Company, dated June 5, 1976 and recorded June 8, 1976 in the Tompkins County Clerk's Office in Liber 551 of Deeds at page 852.
3. An easement given by Lester J. Milligan Sr. and Viola Milligan to New York State Electric and Gas Corporation dated May 7, 1968 and recorded in said Clerk's Office in Liber 476 of Deeds at page 861.
4. A right of way given by Nina McGraw and Fred McGraw and Delta H. Knettles and Charles H. Blood to New York State Electric and Gas Corporation dated October 5, 1935 and recorded in said Clerk's Office on March 4, 1936 in Liber 239 of Deeds at page 106.
5. A right of way given by J.P. Knettles to Ovid Electric Company dated August 20, 1919 and recorded May 6, 1919 in said Clerk's Office in Liber 5 of Miscellaneous records at page 83.

Further subject to life use of the residence house and two acres of land contiguous to said dwelling house by Viola Milligan only, provided however that the said use shall be as a residence only and not as rental property or for any other use. The said Viola Milligan shall pay all utilities, insurance, water and maintenance cost, keeping said premises in as good condition as of the date of November 23, 1988.

Being the same premises conveyed to Liang Chun Po and Ching Po Maxim by Warranty Deed dated November 23, 1988 and recorded November 29, 1988 in said Clerk's Office in Liber 642 of Deeds at page 186.

Also being the parcel shown and designated as parcel 2 on a certain survey map entitled Arthur Milligan Sr. and Viola Milligan N. Triphammer (Mil #95) Town of Lansing Tompkins County New York dated October 20, 1988 and drawn by Gary Bruce Davison a copy of which was filed in the Tompkins County Clerk's Office on November 29, 1988 in Drawer L, Page 71.

**Parcel B 2669 N. TRIPHAMMER RD, TW OF LANSING TP# 44-1-2**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York being a part of Military Lot #95 in said Town and more particularly bounded and described as follows: Commencing at a point in the centerline of North



PARCEL 4

( PARCEL B 2669X, Triphammer Road, Town of Lansing, TPA44-1-2, (LANSING) )

Triphammer Road in said Town said point being located Northerly a distance of 2,416.34 feet along said centerline from it's intersection with the centerline of Cherry Road in said Town; thence running North 08 degrees 54' East along the centerline of said North Triphammer Road a distance of 186.00 feet to a point, thence running South 82 degrees 35' East and passing through a point marked by a 5/8" rebar with survey cap at 25 feet and running a total distance of 225 feet to a point marked by a 5/8" rebar with survey cap, thence running south 08 degrees 54' West a distance of 186 feet to a point marked by a 5/8" rebar with survey cap, thence running North 82 degrees 35' West and passing through a point marked by a 5/8" rebar with survey cap at 200 feet and running a total distance of 225 feet to a point in the centerline of North Triphammer Road and the point or place of beginning. The above described parcel contains .96 acres of land more or less.

SUBJECT TO the following to the extent that they affect the above described premises.

1 The rights of the public in and to that portion of the above described premises lying within the bounds of the public highway

2 A right of way given by Arthur Milligan Jr. and Susan Milligan to New York Telephone Company dated May 1, 1976 and recorded in the Tompkins County Clerk's Office on May 21, 1976 in Liber 551 of Deeds at page 372

3 An easement given by Arthur Milligan Jr and Susan Milligan to New York State Electric and Gas Corporation dated May 9, 1968 and recorded on July 30, 1968 in said Clerk's Office in Liber 476 of Deeds at page 859

4. A right of way given by Nina McGraw, Fred McGraw, Delta H. Knottles and Charles H Blood to New York State Electric and Gas Corporation dated October 5, 1935 and recorded March 4, 1936 in said Clerk's Office in Liber 239 of Deeds at page 106.

5 A right of way given by J.P. Knottles, to the Oxid Electric Company dated August 20, 1919 and recorded on May 6, 1919 in said Clerk's Office in Liber 5 of Miscellaneous Records at page 83

Being the same premises conveyed to Liang Chun Po and Ching Po Maxim by Warranty Deed dated November 23, 1988 and recorded November 29, 1988 in said Clerk's Office in Liber 642 of Deeds at page 189

Also being the same premises shown and designated as Parcel 1 on a certain survey map entitled Lands of Arthur Milligan Sr. and Viola Milligan located, North Triphammer Road (Mil Lot #95) Town of Lansing Tompkins County New York dated October 20, 1988 and drawn by Gary Bruce Davison a copy of said map was filed in the Tompkins County Clerk's Office on November 29, 1988 in Drawer L, Page 71.

The above described parcels are conveyed together with all rights of grantors contained in an Option to Purchase between Arthur Milligan, Sr. and Liang Chun Po and Ching Po Maxim dated November 23, 1988 and recorded December 14, 1988 in said Clerk's Office in Liber 33 of Misc. Records at page 171.

Also the above described parcels are conveyed together with and subject to an agreement between Viola Milligan and Arthur Milligan and Liang Chun Po and Ching Po Maxim dated September 10, 1991 and recorded September 12, 1991 in said Clerk's Office in Liber 664 of Deeds at page 675.

LIBER 839 PAGE 8

**PARCELS**  
**Stormy View Drive, Town of Lansing, TP#41-1-29.2**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York, being Lots Nos. 71, 72, 73, 75 and 76, together with the portion of Sky Acres Drive lying between the westerly line of Stormy View Road and the easterly line of North Triphammer Road, all as shown on a subdivision map entitled "Sky Acres Developer and Builder Alex Cima" map and measurements by Kenneth L. Jones, approved by Howard L. Schlieder, L.S., a copy of which was filed in the Tompkins County Clerk's Office on October 21, 1970 in Town of Lansing 1970 Map Book at Page 11-14.

Subject to easements of record.

The lots set forth above are subject to the following covenants and restrictions which shall run with the land for a period of 20 years from the date hereof.

1. Each of the numbered lots specified above shall be used for residential purposes only and may be improved only with a dwelling containing units for not more than two families, private dwelling garages for personal passenger automobiles and structures incident to private dwellings. Any dwellings constructed on said premises shall have a market value at 1986 of at least \$140,000.00, exclusive of land value. The road shall be used only for road purposes unless and until an approved revision of the above mentioned subdivision map has been obtained and the consent of the owner of lots 74 and 77 as shown on said map has been obtained for relocation or other use of said land as shown as the roadway on said map.
2. No chickens or livestock of any nature or description shall be kept on any of the premises except the usual household pets.
3. The exterior of any dwelling constructed on any of the premises shall be completed within two years of commencement of the improvement.
4. No dwelling shall be moved to or reconstructed on any of the premises.
5. No trailers or mobile homes shall be kept on any of the premises at any time.
6. None of the premises shall be used for storage of any materials, machinery or equipment or supplies of any kind or nature except during the course of construction of any improvement on the land.
7. No building shall be constructed less than 25 feet from the highway right of way line nor closer than 12 feet from the side and rear lot lines.
8. No improvement shall be erected so as to exceed 30 feet in height measured from the average elevation of the ground at the base of the building. This limitation does not apply to chimneys, ventilators or other usual projections.
9. No fence or wall other than the wall of a building shall exceed six feet in height above ground.
10. Modern sanitary septic tank system, approved and installed pursuant to directions of the Tompkins County Department of Health, shall be used.
11. None of the above described lots shall be subdivided.
12. None of the premises shall be used for commercial purposes of any kind or nature. For the purpose of this covenant the giving of instrumental or voice lessons for hire to individuals or small groups shall not be deemed a "commercial purposes."

Being the same premises conveyed to Ching Po and Liang Chun Po by Warranty Deed dated July 12, 1989 and recorded July 19, 1989 in the Tompkins County Clerk's Office in Liber 647 of Deeds at page 938.

Subject to a right of way for ingress and egress over the road denominated "Sky Acres" to and from the portion of Sky Acres Drive that has already been conveyed to the Town of Lansing to and from North Triphammer Road, all as shown on the above mentioned map, for the benefit of the owner or owners of lot 74 and lot 77 as shown on said map unless and until access to said lots is



**PARCEL 5**  
**Stormy View Drive, Town of Lansing, TP#41-1-29.2**

provided in some other manner acceptable to the owners of said lots 74 and 77 and said lot owners have released or otherwise terminated the right of way granted by this paragraph.

TOGETHER WITH that strip or gore of land lying immediately adjacent and to the north of lots 71 and 75 and south of the southerly boundary of premises reputedly of Pinney (see Liber 675 of Deeds at page 150) as more particularly shown on a map, incorporated herein by reference entitled "SURVEY MAP SHOWING LANDS OF CHING AND LANG CHUN PO, NORTH TRIPHAMMER ROAD, TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK" dated April 5, 1993 by T.G. Miller P.C. Engineers and Surveyors to be filed concurrently herewith.

LIBER 839 PAGE 10

seals the day and year first above written.

IN PRESENCE OF

LIANG CHUN PO  
LIANG CHUN PO

Ching Po  
CHING PO

)  
) ss:

On the \_\_\_\_ day of January in the year nineteen hundred ninety nine before me, the undersigned, a Notary Public in and for said \_\_\_\_\_, personally appeared LIANG CHUN PO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

)  
) ss:

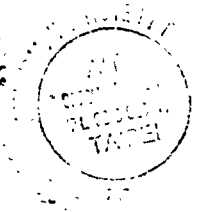
On the \_\_\_\_ day of January in the year nineteen hundred ninety nine before me, the undersigned, a notary public in and for said \_\_\_\_\_, personally appeared CHING PO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Taiwan }  
City of Taipei }  
American Institute in } ss:  
Taiwan, Taipei Office }

\_\_\_\_\_  
NOTARY PUBLIC

On January 11, 1999, before me, the undersigned, personally appeared Liang Chun Po and Ching Po proved to me on the basis of satisfactory evidence to be the person whose name(s) ~~is~~ are subscribed to this instrument, and acknowledged that ~~he~~ ~~she~~ / they executed it.

Thomas J. Meredith  
Thomas J. Meredith  
Special Notary (PL96-8)  
at and duly qualified  
My commission expires August 4, 1999



Funeraria County, SS: 19  
Registered on the \_\_\_\_\_  
at \_\_\_\_\_ o'clock P.M., in the  
of Page \_\_\_\_\_ and back  
Return to:  
GAMATEC



11 Deed  
Rec 03/30/01  
L 900 P 17  
Tax Lot 44.-1-3.3

3, Item d.

LIBER 900 PAGE 17

**WARRANTY DEED  
with Lien Covenant**

**THIS INDENTURE** made this 30th day of March, in the year Two Thousand One

**BETWEEN** Po Family Limited Partnership, a limited partnership formed under the laws of the State of New York, with principal offices at 201 Elmwood Avenue, Ithaca, New York 14850,  
party of the first part, and

John F. Young and Susan M. Barnett, husband and wife, residing at 410 Triphammer Road, Ithaca, New York 14850, as tenants by the entirety as to an undivided one-half interest, and James R. Young and Julie R. Young, husband and wife, residing at RD3, Box 149, Port Allegany, PA 16743, as tenants by the entirety as to the remaining undivided one-half interest,  
party of the second part,

**WITNESSETH**, That the party of the first part, in consideration of ONE AND NO/100 Dollars (\$1.00) lawful money of the United States, and other good and valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the survivor(s), his or her distributees and assigns forever.

The premises are more fully described on the attached Schedule A.

**TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

**TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, its heirs, distributees and assigns forever.

**AND** the party of the first part covenants as follows:

**FIRST**, That the party of the second part shall quietly enjoy the said premises;

**SECOND**, That said party of the first part will forever **WARRANT** the title to said premises.

**THIRD**, That, in Compliance with Sec. 13 of the Lien Law, the grantor(s) will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

**IN WITNESS WHEREOF**, the party of the first part have hereunto set its hand and seal the day and year first above written.

**IN PRESENCE OF** PO FAMILY LIMITED PARTNERSHIP

By: *Ching Po*  
Ching Po, General Partner

RECEIVED/FILED  
TOMPKINS COUNTY CLERK  
2001 MAR 30 AM 10:11

STATE OF NEW YORK )  
COUNTY OF TOMPKINS ) ss:

On the 30th day of March in the year 2001, before me, the undersigned, a Notary Public and for said State, personally appeared Ching Po, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

DAVID A. TYLER  
Notary Public, State of New York  
No. 4633353  
Qualified in Tompkins County  
Commission Expires Sept 30, 2002

*David A. Tyler*  
NOTARY PUBLIC

SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Lansing, County of Tompkins and State of New York, and being a part of Military Lot #95 in said Town, and more particularly bounded and described as follows:

BEGINNING at a point marked by a pin, which point is located the following four courses and distances from the intersection of the center line of North Triphammer Road with the center line of Triphammer Terrace:

1. southerly along North Triphammer Road a chord distance of 2,398 feet, more or less, to a point in the center line of North Triphammer Road;
2. south 02 degrees 11' 35" east 299.59 feet to a point in the center line of North Triphammer Road;
3. south 02 degrees 07' 20" east 342.32 feet to a point in the center line of North Triphammer Road;
4. north 86 degrees 18' 07" east, passing through a pin set in the easterly line of North Triphammer Road at 25 feet, and continuing along this course a total distance of 440.13 feet to the point or place of beginning (which point marks the northwesterly corner of Parcel B and the northeasterly corner of Parcel E as shown on the survey map hereinafter referenced);

map

Running thence south 02 degrees 12' 53" east, passing through pins at 186 feet, at a further distance of 118.07 feet, for a total distance on this course of 550.07 feet to an existing pin at the southeasterly corner of premises reputedly of Milligan (643 Deeds at page 417);

Running thence north 87 degrees 17' 07" east along the north line of premises now or formerly of Cornell University (439/452), passing through pins at 300 feet, 600 feet, 900 feet, 1,250 feet, and 1,500 feet, and continuing on this course a total distance of 3,227.40 feet to a pipe;

Running thence north 02 degrees 49' 26" west along the west line of premises reputedly of Hillcrest Associates (643 Deeds at page 1069) a distance of 432.09 feet to a pipe;

Running thence north 03 degrees 33' 46" west along the west line of premises reputedly of Krizek (835 Deeds at page 25) a distance of 130.14 feet to a pipe;

Running thence south 87 degrees 26' 46" west along said premises reputedly of Krizek (835 Deeds at page 25) a distance of 1,812.15 feet to a pipe;

Running thence south 87 degrees 27' 22" west a distance of 1,160.95 feet to a pin (this and the next two courses being along the southerly boundary of other premises of the grantees);

Running thence south 00 degrees 00' 22" east a distance of 16.50 feet to a pin;

Running thence south 86 degrees 18' 07" west a distance of 246.02 feet to the point or place of beginning.

SUBJECT TO the following insofar as they may affect the above-described premises:

1. Right of way given to Ovid Electric Company dated August 20, 1919 and recorded May 6, 1919 in said Clerk's Office in Liber 5 of Miscellaneous Records at page 83.
2. Right of way given to New York State Electric and Gas Corporation dated October 5, 1935 and recorded March 4, 1936 in said Clerk's Office in Liber 239 of Deeds at page 106.
3. Easement to New York State Electric and Gas Corporation dated May 7, 1968 and recorded in said Clerk's Office in Liber 476 of Deeds at page 861.
4. Right of way given to New York Telephone Company dated June 5, 1976 and recorded June 8, 1976 in the Tompkins County Clerk's Office in Liber 551 of Deeds at page 852.



LIBER 900 PAGE 19

The above-described premises are shown as Parcel B on a survey map entitled "Survey Map showing lands of Po Limited Partnership and Young et al., No. 2665 - No. 2677 North Triphammer Road, Town of Lansing, Tompkins County, New York", prepared by T.G. Miller, P.C., Engineers and Surveyors, dated February 13, 2001, a copy of which is intended to be filed concurrently herewith.

The above-described parcel is being expressly conveyed without access (ingress or egress) to North Triphammer Road and there shall be no implied easement of access or easement of necessity over the portion of the premises being retained by the grantor for the benefit of the premises hereby conveyed (the premises being retained being shown on the T.G. Miller survey being filed concurrently herewith as Parcels C and D/E thereon).

BEING A PORTION OF PARCEL 4(A) described and conveyed in the deed from Ching Po and Liang Chun Po to Po Family Limited Partnership dated January 1, 1999 and recorded January 19, 1999 in the Tompkins County Clerk's Office in Liber 839 of Deeds at page 1.

Also being a portion of the parcel shown and designated as Parcel 2 on a certain survey map entitled "Arthur Milligan, Sr., and Viola Milligan, N. Triphammer (Mil #95), Town of Lansing, Tompkins County, New York", dated October 20, 1988, and drawn by Gary Bruce Davison, a copy of which was filed in said Clerk's Office on November 29, 1988 in Drawer L, page 71, said Parcel 2 having been conveyed to Liang Chun Po and Ching Po (formerly) Maxim by deed dated November 23, 1988 and recorded November 29, 1988 in said Clerk's Office in Liber 642 of Deeds at page 186.

RECEIVED  
\$ 604.00  
MAR 3 0 2001 1811  
REAL ESTATE  
TRANSFER TAX  
TOMPKINS COUNTY

Tompkins County, NY  
Recorded on the 30<sup>th</sup> Day  
of March 2001 at 10:14  
o'clock A. M., in Liber 900  
of Deeds at page 17  
and examined.  
Geneva R. Valenti.



DELAWARE RIVER SOLAR

# VARIANCES

A photograph of a sunset over a field. The sun is low on the horizon, casting a warm glow and long shadows across the landscape. The field in the foreground is golden-brown, and there are trees and hills in the background.

BARBARA GARIGLIANO  
Blustein, Shapiro, Frank  
& Barone LLP



# What is a variance?

A variance is a request to deviate from zoning law requirements. If granted, it permits the owner to use the land in a manner not otherwise permitted by the zoning law. It is not a change in the zoning law. Instead, it is a specific waiver of requirements of the zoning law.

# Variations – NY Law

The Town Law at §267-b(5); the Village Law at §7-712-B(4); and the General City Law at §81-b(5) set forth the state law authority of Zoning Boards of Appeals (“ZBA”). In general, a ZBA may reverse, affirm or modify (wholly or partly) the determination by an administrative official charged with the enforcement of a Zoning Law, and to that end, the ZBA shall have all the powers of the administrative official making the determination appealed from.

The Town, Village and City Law have similar legislative requirements. For purposes of today’s presentation, our examples will be a variance in a Town governed by Town Law §267.



# Variations – Solar Projects

In the context of a Solar Project, the “administrative official” making a determination which is to be appealed from is most often the Code Enforcement Official. In some towns, (Blooming Grove, Orange County), local officials require an application be made to the Planning Board and only recognize a right to appeal from a Planning Board denial.

There is a statutory authorization to “appeal” certain variations without an administrative denial. The direct path to a ZBA, while legislatively authorized, is often ignored by local governments.

# Zoning Laws – A Development Guide

A zoning law is a community's guide to its future development. That is its purpose. It is not meant to be just another governmental intrusion or another bit of red tape to be untangled before the property owner can go ahead with development plans.

The protections afforded residents and property owners within the community from undesirable development come from the restrictiveness of zoning. Traditionally, zoning is characterized by pre-set regulations contained in a local law, and applied uniformly within districts. A landowner can look at the zoning map and regulations and know that if he follows them, he has a right to use his land in a certain way, and that neighboring property is subject to the same restrictions. Because all land in the district is subject to the same rules, and because no two parcels of land are precisely the same, problems can arise.



# The First Zoning Law

When the first zoning ordinance in this country was passed in New York City in 1916, there was doubt that the courts would uphold its constitutionality, since it was a new and, at that time, radical system of land use control. Various "safety valves" were, therefore, included in that first ordinance, in an attempt to relieve the pressure of too rigid enforcement of the zoning ordinance and any attendant hardship, and also to attempt to ensure judicial approval of the new concept. Foremost among these "safety valves" was the concept of an administrative body that would stand as a buffer between the property owner and the court, designed "to interpret, to perfect, and to ensure the validity of zoning." That administrative body is the ZBA, referred to in the 1916 NYC Zoning as a board of adjustment.

# Judicial Approval of Zoning

The concept of zoning received judicial approval early in history<sup>1</sup>. The "safety valve" aspect of boards of appeals was recognized by the courts of New York State as early as 1925, when a court discussed the fact that zoning regulations limit the freedom of action of an owner in dealing with his/her property and, by their very nature, raise constitutional questions as to whether an individual's rights are violated.

<sup>1</sup>*People v. Kerner*, 125 Misc. 526, 533 (Sup. Ct., Oneida Co., 1925).



# Court Findings

In determining that zoning was a legal restriction on use of property, a court in 1925 found:

*"The creation of a board of appeals, with discretionary powers to meet specific cases of hardship or specific instances of improper classification, is not to destroy zoning as a policy, but to save it. The property of citizens cannot and ought not to be placed within a strait-jacket. Not only may there be grievous injury caused by the immediate act of zoning, but time itself works changes which require adjustment. What might be reasonable today might not be reasonable tomorrow."*

The Court of Appeals, New York State's highest court, has recognized the necessity for and the value of boards of appeals as a "safety valve" to prevent the oppressive operation of zoning laws in particular instances, when the zoning restrictions are otherwise generally reasonable<sup>2</sup>.

<sup>2</sup>*People v. Walsh*, 244 N.Y. 280, 290 (1927).

# ZBA Creation

Town Law §267(2) provides that any Town adopting zoning must provide for the appointment of a board of appeals. This must be done in the zoning ordinance or local law itself. The appointment is not discretionary, as in the case of a planning board, but must be made by any municipality which has adopted zoning.

The statutes provide for a ZBA of three (3) or five (5) members. Under prior law, a board could have up to seven (7) members, so there are rare localities with pre-existing seven- (7) member boards.



# Municipal Home Rule Law Impact

Pursuant to Section 10 of the Municipal Home Rule Law, a town, by local law, may supersede or modify any provisions of the Town Law in their application to that particular town. This means that, by local law, a town may vary the requirements set forth in the Town Law, relating to the number of members on the board of appeals and their terms of office.

# ZBA Powers and Duties

The powers and duties of the ZBA are specifically set forth in the Town Law. As is usually the case in planning and zoning, however, there has been extensive litigation and judicial interpretation of these provisions. There are very few, if any, fields of law that have generated more litigation than that dealing with boards of appeals.

All ZBAs have appellate jurisdiction by state law. Appellate jurisdiction is the power to hear and decide appeals from decisions of those officials charged with the administration and enforcement of the zoning law.

The Town Law provides that boards of appeals are limited to appellate jurisdiction “unless otherwise provided”. Otherwise provided may, for example, be the grant of authority for a ZBA to issue a special permit.



# Appellate Jurisdiction – In General

Appellate Jurisdiction is limited to “hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation or determination made by the administrative official charged with enforcement of the local law”. In a case in which the parties to a dispute appeared before a board of appeals for its interpretation of the terms of a zoning ordinance, without having first applied for a permit, been denied the permit and then appealed the denial, the court declared the findings of the board null and void.

In other words, in the absence of an application for a building permit, in the absence of a denial of such application on the ground that the proposed use violates the Zoning Law, and in the absence of an appeal from such decision to the board of appeals, the board has no jurisdiction or power to make any ruling as to the meaning of any provision of the ordinance.

# Appellate Jurisdiction – Variances

The same reasoning holds true for the issuance of a grant. Granting a variance is an appellate power. In general, a property owner cannot simply appear before the board of appeals and ask for a variance. While it is true that only the board of appeals can issue a variance, it is equally true that it cannot issue a variance except on an appeal from a decision made by the zoning enforcement officer. It is only on such appeals – and then only when the applicant can show that he meets the legal requirements for a variance – that the board of appeals can issue a variance.



# Appellate Jurisdiction – Exceptions

There are narrow exceptions which apply in cases where area variances are necessary in the course of subdivision, site plan and special use permit (“SUP”) applications. In such cases, the statutes allow an applicant to apply directly to the board of appeals for an area variance without having to first apply to the enforcement officer for a permit and appeal a denial.

See Town Law §274-a(3), 267-b(3) and 277-(6).

In practice, local governments routinely ignore authorized direct area variance applications. Recently, for example, the Town of Blooming Grove rejected an authorized direct appeal for a sideyard setback variance and directed DRS to apply to the Planning Board, be denied, and appeal the Planning Board denial to the ZBA.

# ZBA Function

In its exercise of the appellate power, it has been held that it is not the board's function merely to decide whether the enforcement officer's action was "arbitrary and capricious." Rather, the board of appeals must conduct a *de novo* review; that is, it must review all of the facts which formed the basis of the decision appealed from and must decide the application as though it were the enforcement officer.



# ZBA Powers

In this context, it becomes easier to appreciate the following words of the enabling statutes:

*“The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.”*

See Town Law §267-b(1)

# ZBA Limitations on the Board's Powers

The board of appeals is an administrative body of limited jurisdiction and powers designed to function as a "safety valve" to relieve the pressure of rigid and inflexible provisions of zoning regulations.

The board of appeals serves an essential role examining those restrictions in the individual applications that are brought before it, with the power to vary these restrictions if the circumstances show the need and essential legal criteria are met.



# ZBA- What It Cannot Do

To better understand the limited powers of a ZBA, we need to clarify what a ZBA cannot do. The functions of a board of appeals can be seen better if they are contrasted with the limitations on those functions.

A board of appeals is an administrative body, not a legislative body. It does not have any legislative functions.

The fact that a board of appeals does not have any legislative powers was recognized in early litigation involving the powers of the board<sup>3</sup>:

*"No power has been conferred upon the Board of Standards and Appeals [the board of appeals in New York City] to review the legislative general rules regulating the use of land [cite]. The board does not exercise legislative powers. It may not determine what restrictions should be imposed upon property in a particular district. It may not review the legislative general rules regulating the use of land. It may not amend such general rules or change the boundaries of the districts where they are applicable. Its function is primarily administrative."*

The above decision is an excellent capsule review of the "thou shalt nots" which govern the action of a board of appeals. First, the board of appeals may not itself impose zoning. The State Comptroller observed that:

*"We are satisfied that no authority exists in the General City Law or elsewhere for the delegation of the law-making powers of a legislative body to a purely administrative board, such as a board of zoning appeals".<sup>4</sup>*

<sup>3</sup>Levy v. Board of Standards and Appeals, 267 N.Y. 347 (1935).

<sup>4</sup>Op. St. Comptr. 65-770.

# ZBA- What It Cannot Do (continued)

A board of appeals reviews the general rules adopted by the legislative body respecting the use of land. It has no power to set aside a zoning law on the ground that by its terms are arbitrary, unreasonable and unconstitutional.

The board of appeals does not have the authority to amend the zoning regulations or change the boundaries of the districts where they are applicable.

The distinction between the power possessed by a board of appeals to grant variances, and the power to amend a zoning law, which the board of appeals clearly does not possess, may be a very fine distinction indeed.



# What is a Variance

A variance is permission granted by the ZBA so that property may be used in a manner not allowed by the zoning law. It is only the zoning board of appeals that has the power to provide for such exceptions from the zoning law. Since zoning is meant to implement the municipality's development objectives and protect the health, safety and general welfare of the people, it follows that there are strict rules governing when variances may be granted.

# Variances - Application

Though it is not a legislated change in zoning, a variance is essentially a change in the zoning law as it applies to a single parcel of land. It therefore applies to the land itself, and not merely to the owner who happens to have applied for it.

*“It is basic that a variance runs with the land and, ‘absent a specific time limitation, it continues until properly revoked’ . . .”*<sup>5</sup>

<sup>5</sup>*St. Onge v. Donovan*, 71 N.Y.2d 507, 527 N.Y.S.d 721(1988).



# Use Variance Defined

A use variance is defined as:

*" . . . one which permits a use of land which is proscribed by the zoning regulations. Thus, a variance which permits a commercial use in a residential district, which permits a multiple dwelling in a district limited to single-family homes, or which permits an industrial use in a district limited to commercial uses, is a use variance."<sup>6</sup>*

Since the use variance grants permission to the owner to do what the Zoning Law prohibits, this power of the board of appeals must be exercised very carefully to avoid serious conflict with the overall zoning scheme for the community. The showing required for entitlement to a use variance is therefore intended to be a difficult one.

Town Law §267(1) provides as follows:

*" 'Use variance' shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations."*

<sup>6</sup>Salkin, New York Zoning Law and Practice, 4<sup>th</sup> Ed., §27.08.

# Otto v. Steinhilber

In 1939, the landmark case of *Otto v. Steinhilber*<sup>7</sup>, was decided, and laid down specific rules governing the finding of unnecessary hardship in the granting of use variances. In that case, the owner of a parcel of property which was located in both a residential and commercial zone applied for a variance enabling him to use the entire parcel for a skating rink.

The lower court upheld the granting of the use variance, which ruling was affirmed by the Appellate Division. The Court of Appeals reversed these holdings and in doing so, set forth the definitive use variance rules that are still followed today.

<sup>7</sup>*Otto v. Steinhilber*, 282 N.Y. 71 (1939).



# Otto v. Steinhilber (continued)

The court found that the object of a use variance in favor of property owners suffering unnecessary hardship in the operation of a zoning law ". . . is to afford relief to an individual property owner laboring under restrictions to which no valid general objection may be made."

*"Before the Board may exercise its discretion and grant a variance upon the ground of unnecessary hardship, the record must show that (1) the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone; (2) that the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and (3) that the use to be authorized by the variance will not alter the essential character of the locality."*

These rules have since become known by land use practitioners as the "Otto" rules for granting a use variance.

# Otto v. Steinhilber (continued)

Town Law §267-b(2)(b) essentially codify the *Otto* rules, and those of cases following *Otto*, specifically regarding the issuance of use variances:

*“(b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.”*



# Unnecessary Hardship

The Town Law defines unnecessary hardship using the three criteria established in the *Otto* case, as they have been refined by court decisions over the years. A fourth requirement is based upon court decisions after the *Otto* case, which held that a use variance cannot be granted where the unnecessary hardship was created by the applicant.

# Reasonable Return

Town Law §267-b(2)(b) provides that the first test for the issuance of a use variance is that the applicant must demonstrate to the board of appeals that:

*"the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence."*

The salient inquiry is whether the uses allowed by the zoning law are capable of yielding a reasonable return. An applicant must prove that he or she cannot realize a reasonable return from each of the uses permitted in the zoning district.



# Reasonable Return (continued)

It has been held that only by actual "dollars and cents proof" can lack of reasonable return be shown.

*"A mere showing of present loss is not enough. In order to establish a lack of 'reasonable return', the applicant must demonstrate that the return from the property would not be reasonable for each and every permitted use under the ordinance. Moreover, an applicant can sustain his burden of proving lack of reasonable return, from permitted uses only by 'dollars and cents proof' . . ."*<sup>8</sup>

<sup>8</sup>Everhart v. Johnston, 30 A.D.2d 608 (3<sup>rd</sup> Dept., 1968).

# Unique Circumstances

The second test that an applicant for a use variance must adhere to under the Town Law is that the property's plight is due to unique circumstances and not to general neighborhood conditions. Town Law §267-b(2)(b) provides that an applicant must demonstrate to the board: *"that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood."*

*"Difficulties or hardships shared with others go to the reasonableness of the ordinance generally and will not support a variance relating to one parcel upon the ground of hardship."*



# Unique Circumstances (continued)

*"Uniqueness does not require that only the parcel of land in question and none other be affected by the condition which creates the hardship... What is required is that the hardship condition be not so generally applicable throughout the district as to require the conclusion that if all parcels similarly situated are granted variances the zoning of the district would be materially changed. ..."*<sup>9</sup>

The uniqueness relates, therefore, to the hardship, which in turn relates to the land, and not to the personal circumstances of the owner.

<sup>9</sup>*Douglaston Civic Association, Inc. v. Klein*, 51 N.Y.2d 963 (1980).

# Essential Character

The third test that must be met pursuant to Town Law §267-b(2)(b) before a use variance may properly be granted, is that:

*"the requested use variance, if granted, will not alter the essential character of the neighborhood."*

Because one of the basic purposes of zoning is to adopt reasonable regulations in accordance with a comprehensive plan, it follows that changes which would disrupt or alter the character of a neighborhood, or a district, would be at odds with the very purpose of the zoning regulation itself.

One court has held that the applicant will fail this third test if it is shown that the proposed project would "stimulate a process which in time would completely divert . . . [the neighborhood's] . . . complexion." In other words, the proposed project need not in and of itself alter the character of the neighborhood if it is shown that the project would set a pattern for future development that would, in time, alter the neighborhood's character.



# Self-Created Hardship

While it was not a factor established by the *Otto* decision, the self-created hardship rule has now been codified in Town Law §267-b(2)(b).

It is well settled that a use variance cannot be granted where the "unnecessary hardship" complained of has been created by the applicant, or where she/he acquired the property knowing of the existence of the condition she/he now complains of.

The Court of Appeals noted that the property in question was purchased to be used as a funeral home in a district where such use was not permitted. The court observed that:

*"Nevertheless . . . [ the owner] . . . purchased the lot, then applied for a variance. We could end this opinion at this point by saying that one who thus knowingly acquires land for a prohibited use, cannot thereafter have a variance on the ground of `special hardship' . . . "*<sup>10</sup>

<sup>10</sup>*Clark v. Board of Zoning Appeals*, 301 N.Y. 86 (1950).

# Contract Vendee

A contract vendee – i.e., a person who enters into an agreement with the owner to purchase a property contingent on the grant of a variance – is a legitimate “person aggrieved”. Since the contract vendee has yet to purchase the property, he/she cannot be said to present a self-created hardship, but the contract vendee must rely on the circumstances of the owner with whom he/she has a contract in order to prove a variance is warranted.



# Area Variances Defined

Town Law §267(1)(b) defines an area variance as follows:

*" 'Area variance' shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations."*

Area variances are thus, as a practical matter, distinguished from use variances in that a use variance applies to the use to which a parcel of land or a structure thereon is put, and an area variance applies to the parcel itself.

# Practical Difficulties – Pre and Post 1992

Prior to a July 1, 1992 amendment to the Town Law, the standard for the issuance of all area variances was that of "practical difficulty." This term had appeared in the statute for many years and had been interpreted by the courts in a great number of cases significant to its understanding. Since July 1, 1992, the Town Law no longer employs "practical difficulty" as the standard for granting an area variance.

Town Law §267-b(3), adopted in 1992, sets forth today's rules for the granting of area variances. The rules provide that in making a ZBA's determination on an application for an area variance, the ZBA must balance the benefit to be realized by the applicant against the potential detriment to the health, safety and general welfare of the neighborhood or community if the variance were to be granted.



# The Five Factors

In balancing the benefit to the applicant VS the detriment to the community, the board of appeals must consider the following five factors:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
3. Whether the requested area variance is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals but shall not necessarily preclude the granting of the area variance.

# 1

## Undesirable Change in the Neighborhood

The board must consider whether the dimensional alteration being proposed will result in a structure or a configuration that will be seriously out of place in the neighborhood.



# 2

## Alternative to Variance

The board should consider alternatives open to the applicant that are lawful under the Town and Zoning Law. Perhaps, for example, a proposed addition can be constructed in a different location on the property, where a variance would not be needed. Or, as one court recently observed, the applicant should have at least explored the possibility, of either acquiring adjoining vacant property, or of selling his substandard unimproved lot to an adjoining neighbor.

# 3

## Substantiality

It is difficult to quantify “substantiality.” The board should, however, make a reasoned judgment as to whether the nonconformity being proposed is too great, as compared to the lawful dimensions allowed by the zoning law. Some courts have looked favorably upon a board’s application of a simple mathematical analysis. “A variance to reduce a required side yard by fifteen (15%) percent might be reasonable but a reduction by eighty-five (85%) percent of the required side yard may create unjustifiable nonconformity.”



# 4

## Impact on the Environment

The board of appeals should weigh the proposal's potential impact on the environment. Such factors as drainage, traffic circulation, dust, noise, odor, and impact on emergency services, among others, should be considered.

## 5

## Self-Created Difficulty

The most important point to be made here is that self-created difficulty, as it relates to an area variance application, is not the same as self-created hardship, as set forth above with respect to the use variance. Even if present, self-created difficulty constitutes only one factor to be considered by the board of appeals; it does not, in and of itself, act as a bar to the grant of an area variance like a self-created hardship prevents grant of a use variance.

# Minimum Variance Necessary

When granting either a use or an area variance, a ZBA must grant the minimum variance that it deems necessary and adequate, while at the same time preserving and protecting the character of the neighborhood and the health, safety and welfare of the community. Thus, the board need not grant to an applicant everything he/she has asked for. Rather, the board is required to grant only the approval that is necessary to afford relief.



# Conditions

Town Law §267-b(4) empowers the board of appeals, when granting a use or area variance, to impose “such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property.”

A common condition to the grant of a use variance is that prior to issuance of a building permit, site plan review take place or that a Special Use Permit be issued, or both.

# Conditions vs. Alternatives

Conditions are different from alternatives. While an alternative is a different version of relief – or, perhaps, a way to avoid the need for relief – conditions are instead requirements placed on the enjoyment of the relief that the ZBA actually grants. Conditions are meant to mitigate the impacts of the approved project on both the neighborhood and on the integrity of the zoning law.

# Procedure by and before the Board

Procedure is immensely important in the administration and enforcement of the community's zoning law. Procedural requisites should ensure evenhandedness and due process for all parties.

Failure to strictly adhere to procedural requirements imposed by the Town Law or a local zoning law will put at risk any grant of a variance by the ZBA.



# Proper Applicants for a Variance

ZBAs are provided with appellate jurisdiction by state statute. This, of course, envisions appeals to the board from decisions of the administrative official charged with enforcement of the zoning.

The town law limits ZBA's to appellate jurisdiction "unless otherwise provided by local law or ordinance." Variances must always be a request for appellate relief.

The right to appeal to the board of appeals does not extend to everyone. It is necessary to understand the concept of a "person aggrieved", a person who has sufficient standing to be able to properly appeal to the board.

# Refusal to Make a Decision

If no decision had been made by the building inspector, a ZBA has no right to hear and decide any appeal. Without a decision, the appropriate remedy for someone who seeks a decision would be an Article 78 mandamus proceeding against the building inspector, and not an appeal to the zoning board of appeals.

A failure to render a decision was recently the result of an application made for a variance in the Town of Fenton, Broome County. Instead of placing the matter on the ZBA agenda, the Town Attorney returned the application and application fee, leaving DRS without a practical remedy.

# The Landowner and Long-Term Lessee

A landowner is a party entitled to appeal to a ZBA if his/her land is substantially affected. This would include the owner of land whose own application for a permit has been denied since his/her interest is direct. **There is also authority for extension of the owner's rights to a lessee under a long-term lease.**

Typically, a solar Project Company seeking a variance is a tenant under a long-term lease and as such is a party entitled to appeal to the ZBA.



# Contract Vendee

An applicant for a variance under a contract with the owner of the land under which the prospective purchaser would be obligated to purchase only if the variance were granted is a person aggrieved. The court held (1) that the contract vendee (buyer) under a conditional sales contract was a person aggrieved for purposes of appealing to the zoning board of appeals for a variance, and (2) the owner of the land -- the vendor (seller) under the same contract -- was a person aggrieved for purposes of appealing from the board of appeals decision to the court.

Any contract to purchase land for development of a solar project which requires a variance should include a grant of authority to the contract vendee to apply for necessary variances.

# How to Appeal - Timing

Town Law §267-a(5) requires all determinations of the zoning enforcement officer (or a planning board) to be filed in his, her or its office within five (5) business days of the day it is rendered. Town Law §267-a(5) requires that any appeal to the ZBA must be taken within sixty (60) days after the filing of the determination.

# How to Appeal - Forms

Many municipalities supply forms to those who wish to apply for a variance. Properly crafted, such forms can serve to guide the applicant to state clearly what it is she/he wants. An applicant need not use the official forms for his/her appeal, as long as the object of the request are communicated to the local officials.



# How to Appeal – Comprehensive Cover Letter

It is a best practice to draft a comprehensive cover letter to the ZBA enclosing the application, supporting materials, and outlining the facts which support the variance request.

Letters drafted on DRS's behalf enclosing applications to ZBA's for variances are included in the materials provided.

There is no better time to set forth the facts supporting the grant of a variance than in the first communication to the ZBA.

# Referral to Planning Agency

The ZBA may be required to refer certain matters for recommendation before making a decision.

Section 239-m of the General Municipal Law requires that a Town located in a County which has a county planning agency, shall – before taking such action – refer the application to the County planning agency. Town Law section 267-a(10) requires that such referral must occur at least five (5) days prior to the board of appeals' public hearing on the proposed action.

The matters covered by this section include any variance lying within a distance of five hundred (500') feet of a Town boundary or from the boundary of any existing or proposed County or state park, or from the right-of-way of any existing or proposed County or state parkway or thruway, expressway or highway, or (except for area variances) from the boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law.

# Referral Mandatory Timing of Recommendation

The referral requirement is mandatory. Courts have held that a ZBA's failure to follow the mandates of Section 239-m creates a jurisdictional defect, because its provisions are a pre-condition to acquiring jurisdiction. The board's failure to follow referral mandates, therefore, renders its decision void.

The County or regional planning agency has thirty (30) days to report its recommendation. In the event the planning agency fails to do so, the board of appeals may act without such a report.



# Basis for Review; Local Determination Impacts of Recommendations

The County review by the planning agency is limited to a determination if the proposed action is likely to create intercommunity or community-wide implications. Absent these determinations, the County planning agency may respond that the action is a matter of local determination only and not make a recommendation.

If the County planning agency recommends approval, a majority vote of a quorum of members present at a meeting must vote on the application.

If the County planning agency recommends disapproval or modification, the board of appeals can only act contrary to the recommendation by a vote of a majority plus one of all of its members (not merely of members present) and after the adoption of a resolution fully setting forth the reasons for the contrary action. Failure to comply with the voting requirements in Section 239-m renders the local decision invalid.

# Environmental Quality Review Lead Agency

Any appeal to a board of appeals will require a decision that constitutes an “exercise of discretion” by the board, thereby invoking application of the State Environmental Quality Review Act, better known as “SEQRA”.

Very often in the context of an area variance, a site plan or special permit application will be made to a Town Board or Planning Board and a board other than the ZBA will be the Lead Agency for purposes of SEQRA review.

If the ZBA is the Lead Agency, the first SEQRA decision is classification of the matter as a Type I, Type II or Unlisted Action under SEQRA.

# Type II Actions

Some classification decisions are guided by a list of Type II Actions, which have already been determined not to have a significant adverse impact on the environment. If the board finds that the matter is Type II, it should document that finding, whereupon its SEQRA function is complete.

It should be noted that certain applications for a variance that commonly come before a board of appeals are listed as Type II. Among these are the granting of all setback and lot-line variances.

A use variance will always be either a Type I or Unlisted Action, thus requiring the board of appeals to make a “Determination of Significance”.



# Use Variances – Criteria Overlap

With respect to use variance applications, there is an overlap between the statutory criteria for granting the variance, on the one hand, and the criteria under Part 617 for determining whether to require an environmental impact statement (“EIS”). To be granted a use variance, the applicant must show, among other factors, that the variance, if granted, will not alter the essential character of the neighborhood.

Closely akin, SEQRA requires the board (if lead agency) to consider community character and aesthetics in making its Determination of Significance. Even where the board decides not to require an EIS – it issues a “negative declaration” – it must apply the same factors in its later review of the merits of the application.

# Redundant SEQRA Reviews

Another practical problem is the potential for redundant SEQRA reviews where, once a use variance is granted, the ZBA, Planning Board or Town Board must also issue a Special Use Permit. This subsequent Special Use Permit review often requires SEQRA review in itself. This may result in needless repetition of the same SEQRA issues that were addressed during the variance application. To avoid such repetition, the lead agency should perform SEQRA review of the entire potential project at an initial stage, and then apply the determination from that review to any subsequent permits or approvals that are necessary.

# Time and Notice for Hearing

The Town Law requires a hearing before the ZBA may grant a variance. Local Zoning Law may have requirements in addition to those in the Town Law.

The ZBA must fix "a reasonable time" for the hearing. This means that after an appeal is taken to the board, the board of appeals must fix a date in the reasonable future for the required hearing. In the case of *Blum v. Zoning Board of Appeals*<sup>11</sup>, this statutory requirement was held to mean that the board of appeals as a body must fix the hearing date. Because no formal action of the board set the date for the hearing, the variance which was granted was invalidated. The courts will construe this requirement strictly. The board should adopt a formal resolution fixing the date for the hearing on any matter coming before it.

The notice of the public hearing must be timely, clear and directed to the proper persons.

<sup>11</sup>*Blum v. Zoning Board of Appeals*, 1 Misc.2d 668 (Sup. Ct., Nassau Co., 1956).



# Who to Notice & When

The Town Law requires at least five (5) days' notice of the public hearing to be provided to the parties; to the county or regional planning agency pursuant to General Municipal Law, Section 239-m; and to the regional state park commission having jurisdiction over any state park or parkway within five hundred (500') feet of the property affected by the appeal.

Many Local Zoning Laws also require notice of the public hearing to be mailed to property owners within a fixed distance of the property subject to the variance application (five hundred (500') feet is typical).

# Use Variances near Town Boundary

When holding a hearing on the granting of a use variance on property that is within five hundred (500') feet of an adjacent municipality, notice of the public hearing must be sent to the clerk of the adjacent municipality at least ten (10) days prior to the hearing. The notice may be given by mail or by electronic transmission. Representatives from the adjacent municipality may appear at the hearing and have a right to be heard.

# Publication; Posting; Signs

Publication of notice is also required, in a newspaper of general circulation at least five (5) days before the hearing. See Town Law §267-a(7).

Local Zoning Laws often provide for a greater period of time between publication and the hearing.

Local Zoning Laws may require posting of the notice of the public hearing on the Town's bulletin board or other conspicuous public place.

Some Local Zoning Laws require a sign be placed on the property subject to a variance application. The practical value of a small sign on a large property in a rural area is of questionable value.



# Strict Interpretation; Local Rules

The requirements of the town law are often accompanied by similar or more strict notice requirements in a Local Zoning Law. In all situations, both should be reviewed and the more onerous should be observed.

Courts are strict about interpreting notice requirements.

A failure to publish a notice, post a notice, erect a sign, notify a nearby property owner, or otherwise strictly comply with notice requirements is jurisdictional so any action taken by the ZBA can be easily set aside if notice requirements are not followed.

# Contents of Notice

What should the notice of the hearing say? While there is no statutory form, the notice should be clear and unambiguous enough so that the general public will know what property is affected by the proposed variance of what relief has been requested, and what the nature of the hearing will be. Obviously, the notice must also state time and place for the hearing.

It is preferable to get the form of notice reviewed by the ZBA chairperson or attorney if the notice is being handled by the applicant. Conversely, the applicant should request the opportunity to review the notice if the ZBA Clerk is handling the notice of the public hearing. Any deviation will render the decision of the ZBA invalid.

# Purpose of the Hearing Evidence on the Record

The purpose of the hearing is to determine the facts involved in the application. Variances may be granted only if facts are in the record showing the criteria for the grant of an area or use variance exist. The purpose of the hearing is to determine whether the applicant is entitled to what he or she is asking for.

While courts generally approve informal hearings, a court will not approve a conclusion or a decision for which no evidence appears on a record. Without a proper record and evidence to support a ZBA determination, courts will order a new hearing. The court may very well use words such as "arbitrary" and "capricious" to describe the faulty board's action being appealed. The important point to remember is that the hearing should concern itself with evidence. This is because courts must have enough information before them to make a reasoned determination in case of decisions of the ZBA challenged in the courts.



# Local Knowledge; Personal Inspections

What about personal knowledge of the community? ZBA members are usually people who know the community well, and thus cannot act as independent and detached from local knowledge. Several decisions have held that it is permissible to rely on personal knowledge as "evidence" to support a board decision, but it must be memorialized as part of the record. The same rule applies to personal inspections of the premises by board members; a personal inspection is perfectly acceptable, but if something learned at such an inspection is relied upon, it should be documented in the record.

# Recommendations

Planning Board, or Town Board information, reports and recommendations may also be considered by the ZBA. A practical matter, they should be evidence of some importance, but they are not determinative. The board of appeals is not bound to follow advice it may receive from a Planning Board or Town Board expressing an opinion on the grant or denial of a variance application. If no recommendations are made by the Planning Board, or the Town Board opposes the grant of a variance the record should contain findings supporting a decision by the ZBA that ignores the input of other local boards.

# Cross Examination of Witnesses

Cross-examination of witnesses at board of appeals hearings may be done by the board itself, and the applicants also has this right. The nature of a board of appeals hearing is such that the right to cross-examination should be limited to relevant points and by persons with an interest in the pending application.

The cross-examination by the applicant of an expert witness hired by an opponent of the grant of a variance by the ZBA is perfectly reasonable.

The cross-examination of the applicant by a competitor with no local interest in the application would be improper.



# Open Meeting Law

The board of appeals is a “quasi-judicial body”. The ZBA is subject to the state’s Open Meetings Law. All meetings of the board of appeals must be open to the public. This requirement of openness will almost always include all of the board’s discussions, deliberations and votes. See Town Law §267-a(1).

No evidence should be received, no witnesses heard, no discussions held, and no decision made except at a meeting open to the public.

# Affidavit in Support – A Best Practice

It is a best practice to submit a sworn affidavit in support of a variance.

Each of the criteria to be “proven” by an applicant for an area or use variance should be supported by fact evidence presented to the ZBA in writing.

Often minutes of ZBA meetings are summary in form. A verbatim transcript is not required. Evidence presented by oral testimony only may not be set forth in the record. Providing evidentiary proof supporting each criteria for granting a variance can’t be lost, if presented in affidavit form and will be part of the record.

# The Decision

The board has sixty-two (62) days from the conclusion of the hearing on the matter to render its decision. This period may, however, be extended by mutual consent of the applicant and the board of appeals.

From a practical standpoint, absent a belief the ZBA is somehow acting in bad faith, it is far better to agree to a reasonable extension than to force a vote likely to result in a denial of the variance.



# Basis and Form of Decision

The facts which form the basis of the board of appeals' decision are found in the criteria, discussed above, for the grant of use or area variances.

However the board arrives at its decision, the decision itself must be supported by findings which constitute "substantial evidence." In other words, findings of fact and/or testimony must be placed on the record which adequately support the decision. Each and every board of appeals' decision is a potential lawsuit. Board of appeals actions are one of the most litigated fields of law.

Every decision of the ZBA should be carefully drafted to reference evidence in the record that supports each required criteria supporting the grant of a variance. The attorney assisting DRS with a variance should prepare a draft of the decision to submit to the ZBA or its legal counsel. If a decision on a variance application is drafted by the ZBA or its legal counsel, DRS should request the opportunity to review the decision in advance of the board's vote on the decision.

# Substantial Evidence

There are many cases in which the decision of a ZBA was remanded by a court back to the board of appeals for a redetermination because of an inadequate record; or, even where an adequate record of evidence existed, because there was no findings of fact which supported the final decision.<sup>12</sup>

The decision must:

- be in writing;
- reference evidence in the record supporting the grant of the variance; and
- contain findings of fact related to the evidence in the record.

A decision not meeting these standards is an invitation to potential opponents of a variance to bring a proceeding challenging the ZBA's decision.

<sup>12</sup>*Gill v. O'Neil*, 21 A.D.2d 718 (3<sup>rd</sup> Dept., 1964).

# Findings

Findings must explicitly set forth the reasons for the decision. A mere restatement of the statutory requirements will not constitute sufficient findings.

A court decision reversing the grant of an area variance to reduce required parking spaces provided:

*"Findings of fact which show the actual grounds of a decision are necessary for an intelligent judicial review of a quasi-judicial or administrative determination . . . There is nothing in the record upon which to base a determination that adequate and existing parking areas are available...".<sup>13</sup>*

<sup>13</sup>*Gilbert v. Stevens*, 284 A.D. 1016 (3<sup>rd</sup> Dept., 1954).



# Amending a Failed Motion

What if the board, upon conclusion of the original hearing of an appeal, conducts a vote that fails to result in a majority in favor of granting the applicant the relief requested? This results in a default denial. The Town Law provides that the board may amend the failed motion and vote on an amendment, within the sixty-two- (62) day period after the close of the public hearing. This will not require the board to follow the statutory rehearing process, described below.

It is, therefore, important for DRS to push a ZBA to revote soon after a denial (or default denial) since an amended resolution requires only a majority vote, vs. an unanimous vote upon rehearing.

# Rehearing

Town Law §267-a(12) provides for the rehearing of a matter upon which the board of appeals has previously made a decision. The rehearing may only occur following the unanimous vote of those members present to conduct the rehearing. Where such a unanimous vote occurs, the board would then rehear the case in its entirety and make a new decision. In order to change its original decision, another unanimous vote of those members then present is required. In addition (and regardless of a unanimous concurring vote), no new decision of the board may be made if the board finds that it would prejudice the rights of any persons who acted in good faith reliance on the original decision.

# Filing the Decision

The Town Law and all Local Zoning Laws provide that every rule and every decision or determination of the board shall be filed in the office of the Town Clerk within five (5) business days after the day it is rendered. These filing requirements are of importance as a practical matter, because the thirty (30) day period to appeal a board of appeals decision to the courts under CPLR Article 78 begins to run from the date of the filing of the board's decision.



# Public Utilities

A public utility would rarely meet the criteria for granting a variance under the Town Law standards. Public Utility structures are rarely contemplated by local zoning. In the context of a use variance, dollars and cents proof that a parcel of land cannot be used for any permitted use is impractical. Proving the alleged hardship is not self-created would be impossible if the use was construction of a Community Solar Project.

The Court of Appeals (NY's highest court) established an alternative standard to be applied when a public utility seeks a variance.

# Con Ed vs. Hoffman

The *Hoffman* case<sup>14</sup> involved a proposed addition of a 565-foot tall wet cooling tower at the Indian Point nuclear plant operated by Consolidated Edison (“Con Ed”) to mitigate negative environmental impacts on the Hudson River from the plants existing cooling system.

After Con Ed’s building permit application was denied 1) on the grounds that the tower exceeded the 40-foot building height limit in the zoning district and 2) the cooling tower was a prohibited use, Con Ed sought a variance from the Village of Buchanan Zoning Board of Appeals (“Buchanan ZBA”). The Buchanan ZBA denied the application, finding that Con Ed had not shown any practical difficulties requiring the variance, had not demonstrated it was the minimal variance necessary, and failed to adequately consider alternatives.

<sup>14</sup>Matter of Consolidated Edison Co. of N.Y. v. Hoffman 43 N.Y.2d 598 (1978)

# Con Ed vs. Hoffman (continued)

The underlying variance request by Con Ed was for both an area and use variance. The height of the proposed cooling tower exceeded the 40-foot height limitation in the zoning district, which led to the area variance request. The Village of Buchanan Zoning ordinance prohibited any use emitting a visible vapor plume extending beyond the boundary of the subject site. The Zoning ordinance also prohibited offsite impacts and the proposed cooling method by the proposed tower would result in a saline deposit beyond the nuclear plant site boundaries . The visible plume and saline deposit were the reason for the use variances requested.



# Con Ed vs. Hoffman (continued)



# Con Ed vs. Hoffman (continued)

This permit denial was challenged and made its way to the Court of Appeals. The Court of Appeals determined that although the traditional approach is to require an applicant for a variance to demonstrate unnecessary hardship, such a showing is “not appropriate where a public utility such as Con Ed seeks a variance, since the land may be usable for a purpose consistent with the zoning law, the uniqueness may be the result merely of the peculiar needs of the utility, and some impact on the neighborhood is likely.”

Instead, utilities can demonstrate entitlement to a variance by showing that the proposed “modification is a public necessity ... required to render safe and adequate service”. And, “where the intrusion or burden on the community is minimal”, the Court of Appeals determined that the requisite showing of lack of local impact “should be correspondingly reduced.”

# Is Community Solar a Public Utility

Since the *Hoffman* case, application of the alternative variance standard for public utility uses in the context of local land use approvals has been expanded given the more inclusive definition of a public utility developed by the Court of Appeals in *Cellular Tel Co v. Rosenberg*<sup>15</sup>. There, the Court of Appeals defined “public utility” as:

*“a private business, often a monopoly, which provides services so essential to the public interest as to enjoy certain privileges such as eminent domain and be subject to such governmental regulation as fixing of rates and standards of service.”* Characteristics of the public utility include (1) the essential nature of the services offered which must be taken into account when regulations seek to limit expansion of facilities which provide the services, (2) “operat[ion] under a franchise, subject to some measure of public regulation,” and (3) logistic problems, such as the fact that “[t]he product of the utility must be piped, wired, or otherwise served to each user \* \* \*[,] the supply must be maintained at a constant level to meet minute-by-minute need[, and] [t]he user has no alternative source [and] the supplier commonly has no alternative means of delivery.”

<sup>15</sup>*Cellular Tel Co v. Rosenberg*, 82 N.Y. 2<sup>nd</sup> 364 (1993)



# Is Community Solar a Public Utility (continued)

This much broader definition of public utility has resulted in application of the variance standard articulated in *Hoffman* to siting facilities, rather than just modifications or expansions to existing facilities, and to less “traditional” public utilities such as cellular telephone companies and renewable energy projects.

Based on the reasoning in this line of cases, New York courts have annulled variance denials for renewable energy projects based on Town Law §267-b, and remanded such applications to local ZBA’s for review under the public utility variance standard. See *Delaware River Solar, LLC, et al v. Town of Aurora Zoning Bd. Of Appeals, Index No. 808123/2022* (Sup. Ct. Erie Cty. Nov. 7, 2022).

# Is Community Solar a Public Utility (continued)

Zoning Boards of Appeal have applied the public utility variance standard to variance applications submitted for solar energy facilities as a matter of course. *See* Town of Binghamton Zoning Bd. of Appeals Decision, dated June 14, 2022 (applying the public utility variance standard to a community solar developer and granting a variance); *see* Town of Oswego Zoning Bd. Appeals Resolution, dated Jan. 19, 2023 (“The Applicant ... further addressed the applicable variance criteria the Courts of this State have applied to renewable energy projects ... declaring such projects to be public utilities and thus reviewable under the less restrictive *Hoffman* standard of review, which was recently applied by the New York State Supreme Court in a legal proceeding involving the neighboring Towns of Minetto ... the Project is a public utility and thus is afforded the standard of review for a [] variance articulated in *Hoffman* [] ,,

# The Utility Standard – Public Necessity

By its very nature, clean energy is a public necessity as proclaimed by the State of New York in its Clean Energy Standard and further codified in the Climate Leadership and Community Protection Act[.]”.

As former U.S. Secretary of Energy Hazel O’Leary said, “electricity is just another commodity in the same way that oxygen is just another gas.”

Community Solar projects are subject to “regulation and supervision” by the Public Service Commission (“PSC”) because the project will generate electricity. *See W. Beekmantown Neighborhood Ass’n, Inc. v. Zoning Bd. of Appeals of Town of Beekmantown*, 53 A.D.3d 954, 956 (3d Dep’t 2008) (citing N.Y. PUB. SERV. LAW §§ 2(2–b), (12), (23); § 5(1)(b); § 66–c).

Every community solar project is an integral part of the electricity generation and transmission system, generating clean, renewable energy and distributing it to consumers through the electric grid—a utility in its own right, subject to significant public regulation. And even though the more modern utility model has decoupled generation and transmission, companies that generate electricity for sale to consumers through the State’s transmission system are still treated as public utilities.



# The Utility Standard – Public Necessity (continued)

As a community solar development, installation and operation of the Project will be subject to the provisions of the PSC’s “New York State Standardized Interconnection Requirements and Application Process for New Distributed Generators and Energy Storage Systems 5MW or Less Connected in Parallel with Utility Distribution Systems.”

Additionally, the product—electricity—can only be distributed by way of the electric grid. There is no other feasible method for an electricity generator to deliver electricity to consumers. Both the generator and the consumer are beholden to the transmission system to send and receive electricity service, and because of the ever-present demand for power, adequate supply must be maintained at all times.

# The Utility Standard – Lack of Properly Zoned Alternative Sites

It is beneficial for an applicant for a use variance under the public utility standard to show there are no viable sites on which to develop a community solar facility in the municipality that are properly zoned for such a use.

*Hoffman* does not require a showing that other properly zoned, developable, and available sites are not present in a Town. This additional information provides additional support of the necessity to grant a use variance to the property subject to the application including information showing a lack of alternatives make it easier for the ZBA to say “yes”.

Presenting information on site selection is helpful and the following factors should be considered.

# Size of a Parcel

The size of a site must be of a scale to accommodate a project. There is a practical minimum size below which a Community Solar Project is not economically feasible. All parcels below the minimum required parcel size to accommodate a financially feasible project can be eliminated from consideration.



# Parcel Constraints

Any site large enough to accommodate a Community Solar Project must be further studied to determine if environmental constraints are present. Topography, wetlands, depth to bedrock and presence of threatened or endangered species may all hinder development. Any site with material constraints preventing development should be eliminated from consideration.

# Proximity to 3-Phase Powerline

The site must be located adjacent to or near existing utility infrastructure, namely 3-Phase distribution circuit, where the project can interconnect to the utility grid. The circuit must have conductors (wires) large enough to accept locally generated power and be without defects that would cause voltage or thermal violations. At nearly all project sites, the Point of Interconnection (“POI”) is an existing pole on an existing 3-Phase circuit.

Any site not located adjacent to or near a 3-Phase circuit should be eliminated from consideration.

# Substation Capacity

The circuit with the POI must be fed from (connected to) a substation that has a transformer with open capacity. The substation must also be viable for receiving locally generated power without overburdening other equipment at the substation or on the circuit.

Cost estimates for utility infrastructure upgrades should be made and any site located where upgrade costs exceed the level for a project to be economically feasible should be eliminated from consideration.

Finding suitable land with available interconnection capacity is often the most challenging aspect of siting a Solar Project. Capacity is scarce and the utility infrastructure upgrade costs are often prohibitive.



# A Willing Property Owner

After eliminating all sites that are too small, are overly burdened by constraints, are not located on or near a viable circuit fed by a substation with capacity available, an analysis of remaining sites (if any) should be conducted to determine if the owner of the properties is interested in selling or leasing the land. If land is not available to be purchased or leased, the site can be eliminated from consideration.

# Zoning Law Analysis

Once one or more sites are identified as possible development locations, the local zoning should be reviewed. If there are no or few identified sites zoned for public utility uses or development of a Community Solar Project (or if these uses are not permitted in the Town), then the identified site is a good candidate for application of a use variance relying on the Public Utility Standard.

# Local Benefits

While not a *Hoffman* requirement, a properly crafted variance application should also outline the benefits that a Community Solar Project will bring to the local community.

These include local revenue to the County/Town and school district by either taxes or payments in lieu of taxation. Another local benefit is reduced electric costs to local residents and small businesses. A Community Solar Project allows local residents and small businesses the option to “purchase” the electricity generated from the project at a discount to default utility rates. Customers would receive electricity from the transmission utility in the same manner as they do now, but with a discount—and the added benefit of knowing it is being generated from a renewable source in their own Town.

Including benefit information also makes it easier for the ZBA to grant the variance.



# Lack of Community Burden

In most situations, a Community Solar Project will create little or no burden on the community. As noted in *Hoffman* where a proposed project provides a necessary utility (electricity), the showing of lack of burden on the community is reduced.

The support for the variance application should highlight that the Project will be a safe, quiet, clean generator of electricity, with zero emissions, fumes, or odors, no traffic impacts after construction, and little to no noise above background levels.

All of the foregoing should be captured in the enclosure letter to the ZBA enclosing the application and supporting materials.

# Reference Material

1. Town Law 267-b
2. Matter of Otto v. Steinhilber
3. Matter of Con Ed Co. of NY v. Hoffman
4. Matter of Delaware River Solar v. Aurora Town Zoning Board of Appeals
5. Neversink Enclosure Letter
6. Blooming Grove Enclosure Letter

# ENDNOTES

- 1 *People v. Kerner*, 125 Misc. 526, 533 (Sup. Ct., Oneida Co., 1925).
- 2 *People v. Walsh*, 224 N.Y. 280, 290 (1927).
- 3 *Levy v. Board of Standards and Appeals*, 267 N.Y. 347 (1935).
- 4 Op. St. Comptr. 65-770.
- 5 See *St. Onge v. Donovan*, 71 N.Y.2d 507, 527 N.Y.S.d 721(1988).
- 6 Salkin, *New York Zoning Law and Practice*, 4<sup>th</sup> Ed., §27.08.
- 7 *Otto c. Steinhilber*, 282 N.Y. 71 (1939).
- 8 *Everhart v. Johnston*, 30 A.D.2d 608 (3<sup>rd</sup> Dept., 1968).
- 9 *Douglaston Civic Association, Inc. v. Klein*, 51 N.Y.2d 963 (1980).
- 10 *Clark v. Board of Zoning Appeals*, 301 N.Y. 86 (1950).
- 11 *Blum v. Zoning Board of Appeals*, 1 Misc.2d 668 (Sup. Ct., Nassau Co., 1956).
- 12 *Cellular Tel Co v. Rosenberg*, 82 N.Y. 2<sup>nd</sup> 364 (1993).
- 13 *Gilbert v. Stevens*, 284 A.D. 1016 (3<sup>rd</sup> Dept., 1954).
- 14 *Matter of Consolidated Edison Co. of N.Y. v. Hoffman* 43 N.Y.2d 598 (1978)
- 15 *Cellular Tel Co v. Rosenberg*, 82 N.Y. 2<sup>nd</sup> 364 (1993)